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Supreme Court of the United States

October Term, 1956

No. 688

WILHELM REICH, THE WILHELM REICH FOUNDATION and MICHAEL SILVERT,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

WILHELM REICH, M. D.
Counsel for the
Discovery of the Cosmic Life Energy
Orgonon, Rangeley, Maine

Pro Se

Washington
Jan. 10, 1957

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Supreme Court of the United States

October Term, 1956

No. .....

WILHELM REICH, THE WILHELM REICH FOUNDATION and MICHAEL SILVERT,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Petitioners above named pray that a writ of certiorari issue to review a decision and judgment of the United States Court of Appeals for the First Circuit which affirmed judgments of the United States District Court for the District of Maine, Southern Division, entered on May 25, 1956 (R. 534-541).

For background and scientific development of Wilhelm Reich, see Appendix page 11a.

The petitioner Silvert is a licensed physician who has employed the principles of Orgonomy in the treatment of patients and worked with Reich among other physicians and scientists in recent years in the development of cosmic energy experiments.

The Wilhelm Reich Foundation * was established and incorporated in the State of Maine as a non-profit organization under Chapter 50 of revised statutes.

Both the Wilhelm Reich Foundation and Michael Silvert have agreed to adopt as their own the petition and argument of Wilhelm Reich. The Foundation was suspended in 1954 and dissolved December 31, 1955.

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* The purposes of said corporation were:

1. To conduct research and teaching in cosmic orgone energy (orgone physics, orgone biophysics), and natural science generally, its medical, technical, other and all future applications;

2. To establish, operate and maintain laboratories and observatories for scientific purposes;

3. To establish, operate and maintain clinics and hospitals for orgonomic medical research and medical orgone therapy;

4. To establish, operate and maintain educational institutions;

5. To establish, operate and maintain bio-energetic research in agriculture;

6. To acquire and preserve the instruments, library and archives of Wilhelm Reich;

7. To preserve the discoveries of Wilhelm Reich and secure them for posterity by the establishment of institutions of learning, maintenance of museums or otherwise;

8. To publish any material concerning the discoveries and work of Wilhelm Reich; and all future work of the corporation based on these discoveries. (Orgone Energy Bulletin, 1951, burned on Court order, August, 1956.)

OPINIONS BELOW

The United States Court of Appeals for the First Circuit delivered an opinion by Woodbury, Circuit Judge. That opinion has not yet been reported and is printed as an appendix to this petition. (See p. 1a.) There was no opinion in the District Court.

JURISDICTION

The judgment of the Court of Appeals was dated, made and entered on December 11, 1956. (See p. 9a.) The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1), 62 Stat. 928.

QUESTIONS PRESENTED

A. Whether the responsible citizen has, in a self-governing society, within the framework of the Constitution of the U. S. A., the natural civic right to ignore an *unlawful* court order, if this order directs him to break into a safe; to violate the Constitution of the U. S. A.; to lie under oath; or to submit to a commercial and political conspiracy to defraud the U. S. public of a discovery crucial during a planetary emergency.

B. Basic Statutory Questions Involved in Setting Legal Precedent:

I. GENERAL: Whether congressional statutes, well defined to rule a certain circumscribed realm of social functioning (A), may be lawfully applied to realm (B), a *new* realm of nature, also circumscribed and defined, but entirely different from (A)?

II. CONCRETELY: Whether statutes which rule the functioning of railway systems may be lawfully applied to the functioning of air travel systems? Or are rules which govern air travel legally applicable to future space travel?

III. SPECIFICALLY: Whether the Act of Congress (Pure Food Act, 52 Stat. 1043, 21 U. S. C.), which rules the production and distribution of foods and drugs, may be applied to *basic scientific research* in general, and research in the realm of the "ETHER" or "COSMIC ENERGY" in particular?

C. 1. Whether injunctions against basic scientific research in newly discovered realms of nature, obtained by fraud, by misrepresentation of facts to the courts, by concealment of pertinent facts, and by outright falsification of facts, are *lawful* orders.

2. Whether court orders obtained by fraud and conspiracy are, as unlawful orders, automatically null and void. Whether the law requires orders to be *lawful* orders based on *fact* not opinion only, on *truth* and not on falsification, misrepresentation and concealment of fact.

3. Whether government has jurisdiction to determine questions of scientific opinion in realms of *new knowledge* of *basic natural research*.

4. Whether basic research in natural science in hitherto *unknown* realms of nature requires *new laws* of administration and should not be subjected to existing statutory laws, designed to administer *established* knowledge of a *different* kind.

D. Whether non-appearance in court to answer a fraudulent complaint is legally justified, IF

1. a) the acting judge has been informed of the decision not to appear, and of its reasons;

b) these reasons (not to appear in Court) are such that it can be shown by factual evidence and argument, it would have inevitably led to ruin at the hands of a cunning conspiracy;

c) there is no other way to avoid entrapment;

d) it can be shown that the acting judge was victimized to the detriment of his objectivity to do justice in the case.

2. Whether, furthermore, such non-appearance may lawfully be used by the conspirator to carry through his plan to obtain the default injunction.

3. Whether such non-appearance confers jurisdiction upon the Court under influence of conspiracy to proceed without examining its own jurisdiction.

STATUTES INVOLVED

I. The case on Trial and on Appeal is without factual and legal Precedent.

(Appeal Brief, *WR* vs. *U. S. A.*, pp. 2-20, 21-51):

1) *Factually*: Discovery of Cosmic Energy involves space problems without precedent: *Petitioner succeeded in disabling space craft May 12, 1954* (see p. 8, *et seq.*).

2) *Judicially*: There are no applicable Congressional Statutes since material substance of the discovery is without precedent: *Space Ships are causing planetary ("DOR") Emergency by draining Life Energy from the Planet, causing drought and desert development.*

II. Constitution of the U. S. A.

1) The scope of judicial power of Federal Judges over basic scientific research. Art. III, 2.

2) Exclusion of pertinent evidence from jury trial. Art. III, 3.

3) Obedience to unlawful orders obtained by fraud and designed to serve conspiracy. Art. III, 2.

(See Appendix, p. 10a.)

III. Procedural Rules Involved

1) Rule of Criminal Procedure, Rule 12, Subdivision (b), (2) and (4):

Subdivision (b) (2): "Lack of jurisdiction or the failure of the indictment or information to charge an offense shall be noticed by the court at any time during the pendency of the proceeding."

Subdivision (b) (4): "A motion before trial raising defenses or objections shall be determined before trial unless the court orders that it be deferred for determination at the trial of the general issue. An issue of fact shall be tried by a jury if a jury trial is required under the Constitution or an act of Congress. All other issues of fact shall be determined by the court with or without a jury or on affidavits or in such other manner as the court may direct."

STATEMENT OF THE CASE AND BACKGROUND

I. A Cosmic Event Without Precedent (May 12, 1954)

First Contact with Outer Space

On May 12, 1954, seven weeks after issuance of the injunction, an unprecedented event occurred at Orgonon, Rangeley, Maine, where the Orgone Institute Research Laboratories of the Wilhelm Reich Foundation are located.

The following is a verbatim excerpt from the "Second Oranur Report (1951-1956)", under the title, "First Contact with Outer Space" (Vol. V, Rec. App., Suppressed Evidence, R. 585):*

An Event Without Precedent

(On Trial Record under secret code, OROP DESERT Ea)

> "I made actual contact by way of the cloudbuster with luminous objects in the sky on May 12, 1954, between 9:40 and 10:45 p.m.
>
> "During this hour men on earth saw for the first time in the history of man and his science *two 'Stars'*

---

* Vol. V of Record Appendix in Appeals Court (see "Group D" in "Parts of Record to be Printed," p. 5r, Appendix to Appeal Brief of WR), being voluminous to the extent of about 300 pages, could not be submitted to the Circuit Court of Appeals in due time. A motion to extend time for filing was denied. Vol. V of the Record Appendix contains the crucial evidence which was suppressed at the trial, May 3-7, 1956. It constitutes, also, the evidence which would have freed the defendants had the jury known its contents. *The substance of this report, however, was at the time top secret.* This report is not under injunction. It was the main objective of the commercial and political conspiracy and of espionage activities which harassed the work and life of the Discoverer of the Life Energy and his staff for a full 10 years, beginning 1946 (see Exhibit No. 4, Vol. I of Record Appendix: "Red Thread of a Conspiracy" and "Table of Events").

to the west fade out several times when cosmic energy was drawn from them. The shock of this experience was great enough not to repeat such action until October 10th, 1954. The reason for the hesitation was obviously the risk to precipitate an interplanetary war by such experimentation. The event was kept secret until 1957.

"The (AAF) Ruppelt report on UFO's (Unidentified Flying Objects) clearly reveals the helplessness of mechanistic method in coming to grips with the problems posed by the spacemen. The cosmic orgone energy which these living beings are using in their technology is beyond the grasp of mechanistic science since cosmic laws of functioning are not mechanical but what I term 'functional.' Even the mathematical theory necessary to formulate these problems and make them technologically usable, cannot use any of the old mechanistic methods of thought to cope with the functional OR facts.

"The helplessness of mechanistic thinking appears in the tragic short-coming of our fastest jet fighter planes to make and hold contact with UFOs. Being unavoidably outdistanced is not a flattering situation for military pride. The conclusion seems correct: Mechanistic methods of locomotion must be counted out in coping with the spaceship problem. Neither propeller nor jet will or can ever get us into space beyond.

"Easy contact was made on that fateful day with what obviously turned out to be a heretofore unknown type of UFO. I had hesitated for weeks to turn my cloudbuster pipes toward a 'star,' as if I had known that some of the blinking lights hanging in the sky were not planets or fixed stars but SPACE machines. With the fading out of the two 'stars,' the cloudbuster had suddenly changed into a SPACEGUN. From then onward, too, our approach to the problem of space became positive, affirmative, confident in using our carefully screened data.

"New Tools of Knowledge Needed

"When I saw the 'star' to the west fade out four times in succession, what had been left of the old world of human knowledge after the discovery of the OR energy 1936-1940 tumbled beyond retrieve. From now on everything, anything was possible. Nothing could any longer be considered "impossible." I had directed drawpipes, connected with the deep well, toward an ordinary star, and the star had faded out four times. There was no mistake about it. Three more people had seen it. There was only one conclusion: *The thing we had drawn from was not a star. It was something else; a 'UFO.'*

"I must remind the reader that in May 1954 I had read only one report on UFOs; I had not studied anything on the subject. I knew practically nothing about it. But my mind, used to expecting surprises in natural research, was open to meet anything that seemed real. I had to be convinced myself first. Most people try to obtain consent of their impressions before having been convinced themselves. I had long since given up hope to convince anyone steeped in present-day mechanics or mysticism. There were no authorities. There was no one to whom to report this observation.

"(In May 1954, the assault by the American drug business had just begun to bother us a few weeks before.) We were still laboring at an understanding of what had happened in early 1951 when Oranur had burst into our lives; we were still trying to dig out humanly, emotionally and scientifically from under the avalanche of new observations, facts, ideas which Oranur had thrown in our way. I knew, we had without intending it, drilled a hole, as it were, into the wall which had for millennia separated man from the universe around him. We were hard pressed in our attempt to survive the flood of events in good form. A U. S. court of law had issued an order on March 19th, 1954 to stop all OR research activities including

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publication. We thus had to face the flood of incredible new facts, our own emotional and physical misery and the assault by the American and Russian mechanistic mind. It all tied in with our basic research neatly as one single fact: EARTHMEN HAD ENCOUNTERED SPACE AS IT REALLY WAS; not as science had conceived of it heretofore."

II. Survey of the Development of the Cosmic Event

Discovery of Orgastic Convulsion in 1923-1926;

Application of Knowledge of Orgastic Convulsion in CHARACTER ANALYSIS, 1927-1933;

Application of the Same Principle in Human Physiology and the Cancer Shrinking Biopathy, 1934-1945; in Physics and Astrophysics and in the Oranur Experiment, 1946-1956.

Orgastic Plasma Convulsion

The discovery of the orgastic convulsion at the climax of natural mating opened up a vast field of new human knowledge. In 1923, the discovery was made of the function of "orgastic potency" or orgastic convulsion. A basic principle of life was uncovered by careful study of human experience in natural mating. The physiological function of "*orgastic potency*" was the red thread guiding Orgonomic basic research ever since 1923 in the pathology of human character development.

(CHARACTER ANALYSIS, three editions, under decree of injunction, first published *10 years before* the discovery of the Cosmic Life Energy.)

LOSE IN CENTER

The function of the orgastic convulsion was, after completion of the studies of human character development in 1933, further applied in human physiology as a central problem of human psycho-somatic pathology: *Biopathies.* The cancer disease was adopted as a biopathic object of experimentation on the basis of the functions involved in orgastic convulsion. The result of this application of the principle of "*orgastic potency*" and the natural function of orgastic convulsion was conducted in cancer pathology from about 1934, beginning in Norway, and ending 1945 in the U. S. A.

It was, as a matter of fact, not the cancer disease itself, but the *life functions* and their disturbances entailed in this disease which prompted me to test experimentally the validity and usefulness of the natural function of orgastic potency in the cancer disease, especially in connection with the problem in what manner alive mobile cancer cells develop within the human organism; they cannot be found in the air. The result was a report written and published in successive parts between 1939 and 1947 and compiled in a book, "THE CANCER BIOPATHY." It was published in 1948. It was fiercely fought ever since by some American drug industries.

"The Cancer Biopathy" did not promise any cancer cures. On the contrary, ever since the beginning of cancer experimentation, careful avoidance of proclamation of any cures and strict adherence to the principle of reporting failure as well as success was due to a crucial discovery in the realm of cancer pathology.

Cancer Shrinking Biopathy

It was found through experimentation with the life energy discovered in the so-called "bions" or "energy vesicles" *in* living tissue around 1938: *The cancer disease is due to severe bio-energetic resignation* with consequent *shrinking in the living organism.* The result of this disturbance of energetic metabolism in living tissue is gradual loss of energy, succeeded by loss of substance and vitality, and finally a process of shrinking of the total system, known but not understood heretofore as "*cachexia*" in routine pathology. In other words, "The Cancer Biopathy" stated that the local cancer tumor, the only object until then of cancer treatment, was only a by-product of a general *plasmatic shrinking biopathy.* It develops in the human organism from emotional *resignation* due to chronic frustration of natural genital love life from childhood through adolescence.

This was a major conclusion in human pathology. It threatened at once the continued existence of industries and medical practices based on the old concept. As was to be expected, they were interested in the continuation of ignorance of the true background of the cancer disease. They proceeded, accordingly, to kill the discovery. "The Cancer Biopathy" was condemned as "promotion of fraudulent cancer cures" by highly placed commercial and political conspirators, and, following them innocently, I assume, a chemist Smyth of the Pharmaceutic Council of the American Medical Assn. (1948), a department of the Consumers Union, under influence of the original instigator, Brady, and finally the food and drug agency.

No cancer or other medical experimentation with orgone energy was done any longer after about 1946.

The Oranur Experiment

I shifted my laboratory facilities in New York and at Orgonon, Maine, completely over to basic experimentation in the physical realm of the Cosmic Energy. The result of this experimentation, to make it brief, was the discovery: *Space is not empty.* Highly evacuated, airless tubes can be charged by cosmic energy and be made to luminate upon certain irritation. This discovery shattered the notion of an empty space. It established the universal existence of the Cosmic Energy discovered by me. I had hit upon the fundamental Law of Nature. In the spring of 1950, I gave up all activities in New York, including rich income from teaching, and established permanent work in Maine.

When the Korean War came down upon us later in 1950, I rearranged my laboratory again to be ready to help in the war effort, if requested. I published the "First Oranur Report" on the experimental work done in physics between 1946 and 1951: *"The Oranur Experiment."* It was received with great interest and some appreciation by dozens of top agencies in the U. S. Government, in the U. S. civic administration and in civilian U. S. agencies; also abroad. A list of these recipients of literature is enclosed in the volume "Conspiracy," No. 41 of which was and still is in the hands of the FDA counsel.

The First Oranur Experiment Report was the acute object of a dangerous international conspiracy and of espionage activities directed from Moscow. The conspiracy was directed to steal this discovery for the U. S. S. R. and to kill it in the United States. (See "Table of Events" on public court record (R. 41-46) and Appendix to Appeal Brief of WR of October, 1956, especially *"Historical Record of Information Given Regarding Oranur,"* p. 35r).

My strenuous efforts to effectuate the recognition by the U. S. Government of the national and international impact of the Oranur Experiment was not immediately met with success due to the very same conspiratorial espionage activities.

III. Reinstatement of certain enjoined activities due to civic responsibilities after the repetition of the Cosmic Event of October 10, 1954

> Establishment of the desert research project, on official court record all through the trial and in Parts of Record to be Printed in Appendix to Appellants' Briefs, (Reich Brief 5r) submitted September 10, 1956, to Clerk, U. S. Court of Appeals for the First Circuit, "Group D—Suppressed and Top Secret Evidence, Referred to on Trial Records as '*OROP Desert Ea*' and as 'Espionage'."

The cosmic event of May 12, 1954, was carefully investigated all through the summer of 1954. The decision was reached to repeat the experimental observation. Finally, October 10, 1954, was designated as the day of the second test.

Also, all during the summer of 1954, work was being done on the Archives of the Orgone Institute to establish as accurately as possible the extent to which the Russian espionage system in the United States had succeeded in collusion with U. S. Government employees and single treacherous individuals planted in high places in American civil organizations to obtain information from and at the same time to destroy and discredit orgonomic research in the United States.

The first result of these research activities during the summer of 1954 was the compilation, printing and distribution of a volume of the series, "History of the Discovery

of the Life Energy," entitled "*Conspiracy,*" with the subtitle "An Emotional Chain Reaction." This compilation contained only original documentary material beginning early 1942 and carrying through 1954. The original documents were numbered in succession and a summarizing "Table of Events" was compiled and added. Copies of this volume were distributed, partially gratis, and partially for recompensation among prominent organizations and personalities of the U. S. A.

A complete set of the impounded literature was sent to the District Court in Portland, Maine, specifically to Judge Clifford in February, 1954. One volume of "Conspiracy" in a black binder was sent to Judge Clifford for information and confirmation of a "Response" sent on February 25, 1954. The "Response" (Petitioners' Ex. 5, R. 85, 336) informed the court that a *conspiracy* existed and *secret research work* was at stake. The authentic documentary volume completed this information. The volume was sent to the court openly; it was fully accessible to the acting United States Attorney, Peter Mills. A volume, No. 41, was sent in September 1954 to the U. S. Department of Health and Welfare.

Now, the two lines of activities at Orgonon merged on October 9, 1954:

The experimental work on UFO's was crucial, pressing and evoked a sense of social responsibility strong enough to force a decision: A letter to Judge Clifford was sent through the Clerk of the Foundation, William Moise. This letter, dated October 9, 1954 (contained in suppressed Record Appendix Vol. III, p. 43), informed the court as follows:

October 9th 1954

COPY

To the United States District Court
Portland, Maine

We wish to inform your good offices that, in the course of October 1954, the Orgone Institute Press will resume its normal function of filling orders for books in the realm of natural science and orgonomic medicine. This decision was made when it was ascertained, beyond any reasonable doubt, that the injunction of March 19th, 1954 was pursued and obtained in a criminal manner by Moscow-directed, American conspirators. We are sending, for your files, a volume of the History of the Discovery of the Life Energy which the Orgone Institute is sending out in connection with this fact.

It was felt that the District Court in Portland should be informed on this step. Should the District Court in Portland have any objection to the resumption of the normal scientific activities of the Orgone Institute and its affiliate organizations, information to this effect would be appreciated.

It is out of deep respect for the basic principles of truth and justice, in whose behalf American Courts are functioning, that the Orgone Institute is proceeding to fulfill its scientific and medical duties.

Sincerely yours,

/s/ William Moise

William Moise,
Oranur Weather Control Operator
On order from the ORGONE INSTITUTE
On behalf of the Orgone Institute Press

Sent: Vol. History of the Discovery of the Life Energy, CORE Vol. VI, Nos. 1-4

cc: Office of the President of the USA.
Mrs. Hobby, Secretary of the Department of Health, Education, and Welfare
Commander, Air Technical Intelligence Center, Air Force
J. Edgar Hoover, Director, Federal Bureau of Investigation

Thus, conspiracy and object of conspiracy were united in one formation and remained united until the present day.

The injunction had so far put a stop to our work. It had greatly reduced our financial resources to pursue our civic responsibilities and research activities.

Agents of the drug agency of the U. S. Government had deceived the acting judge at the trial. The fact was concealed that until October 10, 1954 no literature was being distributed. On October 10, 1954, only the distribution of the literature was resumed, for reasons of information and for financial resources.

No orgone energy devices were to my knowledge ever shipped after October 10, 1954, in interstate commerce, with the exception of the transfer of the accumulators from Rangeley to New York by Dr. Silvert to his own address and not to any customers; a transfer which was accomplished without my knowledge or consent (Appeal Brief for Dr. Michael Silvert, p. 13).

The decision to resume distribution of literature was thus made in the performance of civic duties to remove the obstacle which obstructed our work on which depended the future fate of the planet. The second test of the effects of the space gun upon Unidentified Flying Objects (Ea's in our terms) was performed after careful preparation on

the evening following the date when the letter of October 9, 1954, was sent to Judge Clifford. Operations with orgone energy or cosmic energy which, according to the civil complaint of February 10, 1954, "*did not exist,*" succeeded once more: For the second time "stars" were dimmed, stopped luminating and moved as if in flight in different directions. They were space machines.

There was no doubt whatsoever after this second experience that our cosmic energy research was on the right track. It was standing up to the most exacting techniques of control and testing. The cosmic event was reported to the Air Force Technical Intelligence by one of the operators, William Moise, the Clerk of the Foundation, on his way to Arizona in Dayton, Ohio, on October 14, 1954, at 4:00 p.m.

(See "The Second Oranur Report," FIRST CONTACT WITH OUTER SPACE, p. 78.)

For further information, reference is made to this volume.

We must return now to the interlacing of our further Cosmic Ea research with the continued attempts on the part of the drug agents and their conspiratorial consorts in and out of the American Government.

It is necessary to emphasize the interlacing of research work and conspiracy. The legal representative of the FDA deceived the Court of Appeals as he had previously deceived the District Court judges. He argued in his red-bound Brief for Appellee to the Court of Appeals on November 5, 1956, to quote verbatim (p. 5):

"References to 'conspiracy' are threaded throughout the record and briefs as well as references of the appellants to some *nebulous super secrets involving,* among

others, 'Invasion from Outer Space' (Reich Brief 32) to mention but one such *immaterial subject.*" (Italics by Reich.)

The representative of the FDA wrote this sentence into a response to the Court of Appeals, while their accomplices were trying to intrude and to obtain information on exactly the very same "nebulous" and "immaterial super secrets": OROP DESERT Ea.

The FBI was continuously kept informed on the illegal intrusions and the harassment by espionage agents during the summer months of 1955 and 1956. The bulk of that sequence of events is beyond my domain.

IV. THE FRAUD

The complainant, or whoever directed his activities, had deceived and misled the District Court so completely and thoroughly that it took several years of careful research to understand how such continued deceit could have been so successful heretofore at all. A simple inspection of quotations from the literature in the original complaint and comparison with the original text shows the fraud (see R. 409 and especially R. 436, 437, 438 compared with Petitioners' Ex. 5, R. 95-104, 336).

An Example of Deceit of Court

(From Brief for Appellee, Court of Appeals, No. 5160, p. 4—Italic lines by WR.)

"In the brief of the appellant The Wilhelm Reich Foundation we understand its argument to be that the District Court *erred during the contempt proceeding in refusing to hear evidence showing that* the injunction *was obtained by fraud and suppression of evidence. We find no motion by this appellant to dismiss the amended complaint on these grounds.* We nevertheless discuss the proposition since appellant, Reich, adopts the point in his Statement of Questions Involved (Reich Brief 1). Initially, it must be stated that there is *not the slightest indication in the record, other than appellants' unsupported allegations, of any such actions on the part of the Government. There is no foundation whatsoever for these serious charges. Moreover, there is nothing in the record to show that the appellants ever offered any proof, or indicated what the proof would be, to sustain these charges.*

"We have scrutinized the record in an attempt to understand the basis for the error charged to the District Court of preventing a showing that the injunction decree *was obtained by fraud and suppression of evidence.* Further we *searched to learn where the claimed* fraud lay, what *evidence was suppressed, and at what stage of the proceedings the alleged suppression occurred.*"

Here, the opponent deceived the Court in the open. He could rely on the reluctance of the Court to really believe that anyone would dare to deceive so grossly and so openly right into the face of acting judges.*

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* See also legal summary on fraud in Appendix, p. 27a.

DECEIT NO. 1: "We find no motion by this appellant to dismiss the complaint on these grounds."

RECORD: On October 18th, 1955, in chambers of District Court Judge Clifford, in the presence of Maguire, U. S. Attorney Peter Mills, Counsel Charles Haydon and the Court Clerk Poole, I told the judge that the nature of procedures heretofore made it doubtful that Maguire was a bona fide U. S. Government agent.

On the same day, at the following public hearing, I charged fraud perpetrated upon the court in the form of "misrepresentation of facts" (R. 502). The motion was postponed by Judge Clifford.

Specifically, I moved in a subsequent written "*motion to dismiss the amended information on the grounds of illegal misrepresentation of facts*" (R. 500) on October 24th, 1955. The motion was made in preparation of the presentation of these motions in oral argument at the hearing scheduled by Judge Clifford for November 4th, 1955 (R. 505, 506).

The hearing on November 4th, 1955, was devoted in its entirety to these motions *to dismiss the information on the grounds of "fraud perpetrated upon the Court."* The opponent "was not listening to Dr. Reich while he was talking." (R. 506, bottom.) Maybe this gentleman never listened all through these proceedings when Fraud, Conspiracy and Perjury charges were brought forth . . . The motions were denied in open court hearing, although espionage was specifically charged at the same hearing (R. 504ff, 519).

DECEIT NO. 2: ". . . there is not the slightest indication in the record, other than appellant's unsupported allegations, of any such actions (fraud) on the part of the Government."

RECORD: Here, the mastermind has washed our brain, figuratively speaking, by "double-talk" and "double-think" ("1984" by Orwell) in order to deceive. He conceals at this point before the Court the fact that these motions were denied that same day and that, accordingly, the allegations *are on record* as *charges* in the above-quoted motions *themselves.* This fact was deliberately concealed in order to mislead the Appellate Court again. (Petitioner's Ex. 5, R. 96-104, 336, "*Atoms for Peace* vs. *the Hig,*" Documentary Appendix.)

DECEIT NO. 3: "Moreover, there is nothing in the record to show that the appellants ever offered any proof, or indicated what the proof would be, to sustain these charges.

"We have scrutinized the record in an attempt to understand the basis for the error charged to the District Court of preventing a showing that the injunction decree **was obtained by fraud and suppression of evidence.** Further, we **searched to learn where the claimed** fraud lay, what **evidence was suppressed, and at what stage of the proceedings the alleged suppression occurred."**

RECORD: This sentence demonstrates the **monstrosity of the deceit** before the Court. The monstrous bigness of the deceit is the very factor that prevents its detection since no one would believe that such open deception before courts is possible.

The proof of these allegations looms large all through Record Appendices: Vol. I of the evidence for the defense admitted in court at the trial, Petitioners' Ex. 4, R. 1-62, 336, "The Red Thread of a Conspiracy," and Petitioners' Ex. 5, R. 63-104, 336, "Atoms for Peace vs. the Hig"; also in the Appendix to Petitioners' Ex. 5, R. 95, *et seq.*

We quote here verbatim the charge of fraud brought forth in this evidence, Exhibit 5 for the defense, R. 102-104:

APPENDIX TO FACTUAL PRESENTATION

Compiled by WILLIAM MOISE, Secretary,
EPPO, OROP DESERT EA

The Food and Drug Administration *misrepresented the following* publications as dealing with the "*cure*", "mitigation", "prevention of the disease conditions and symptoms hereinafter enumerated * * * which constitute labeling" (Civil Action 1056) * * *; while at the same time the FDA concealed from the court the *factually true content* of the publications:

PUBLICATION

1. THE SEXUAL REVOLUTION, by Wilhelm Reich, M.D.

True is the fact that CANCER *does not appear at all* in either content or index; the fact is that this book was written long before the discovery of the Orgone.

Not True is the FDA allegation that this work deals with the cure, mitigation, prevention, or treatment of CANCER.

Concealed from the court by the FDA is the fact that the true content of this book is on the failure of the Russian experiment in establishing sexual reforms, due to human structural incapacity for freedom.

2. The Mass Psychology of Fascism, by Wilhelm Reich, M.D.

True is the fact that CANCER *does not appear at all* in either content or index; the fact is that this book, too, was written years before the discovery of the Orgone.

Not True is the allegation by the FDA that this book is about the cure, mitigation, prevention and treatment of CANCER.

Concealed from the court by the FDA is the fact that the true content of this work describes how all forms of irrationality in politics (Red and Black Fascism used as examples) are derived basically from combined structural irrationality of human masses; that this book is an important text for present political psychology (in the libraries of the U. S. State Department and Central Intelligence Agency); that this book was ordered destroyed and burned by Hitler.

3. Character Analysis, by Wilhelm Reich, M.D.

True is the fact that CANCER does not appear in the index, chapter headings, or outlines; that "cancer tumor" cannot be found in the contents.

Untrue is the claim that this book is about the cure, prevention, mitigation, or prevention of CANCER TUMORS.

Concealed was the fact that this work is a basic textbook in psychiatry, detailing the character-analytic technique of the discoverer from its beginnings in psychology to its present firm basis in natural science in the form of orgone biophysics.

4. COSMIC SUPERIMPOSITION, by Wilhelm Reich, M.D.

True is that CANCER, COMMON COLD, ICHTHYOSIS, RHEUMATIC FEVER, HYPERTENSION, OR DIABETES *appear not at all* in either content or index of this work.

Untrue is the presentation by the FDA that this work is concerned with the cure, mitigation, treatment, or prevention of CANCER, COMMON COLD, ICHTHYOSIS, RHEUMATIC FEVER, HYPERTENSION, DIABETES.

Concealed, the fact that this work deals with hurricanes, the shape of the galaxies, and the "ring" of the aurora borealis; that their request for the enjoining of the entire book was solely upon the inclusion of the Bibliography of Works on Orgone Energy at the back of the book.

5. ETHER, GOD AND DEVIL, by Wilhelm Reich, M.D.

True is that CANCER does not appear in the index or content, with the following one exception, p. 123, Chp. VI, "Concentrated Orgone Energy has many beneficial effects on living organisms which I have tried to describe in my CANCER BIOPATHY * * *"

Not True is the allegation that this book deals with the cure, mitigation, prevention, or treatment of CANCER.

Concealed again is the factual content of this work: the description of how the process of functionalism led to the discovery of Orgone Energy (Ether) through objective logic of the thought process; how humanity until this, had evaded discovery through various erroneous thought systems: mysticism, mechanism, etc. * * *

6. THE MURDER OF CHRIST, by Wilhelm Reich, M.D.

True is that CANCER *appears not at all* in index or content.

Not True is the claim that this work constitutes a claim of cure, mitigation, treatment, and prevention of CANCER.

Concealed again from the court is the true content: The Murder of Christ which is the Murder of Life through the ages by and in each of us through the Emotional Plague.

7. PEOPLE IN TROUBLE, by Wilhelm Reich, M.D.

True is that this work is a translation of the original German manuscript "Menschen im Staat" (1936-7), translated in 1947; that on page 123 of the Appendix the discoverer writes of, "The new set of problems grouped around the natural functions of endogenous infection and decay * * *", "The cancer process is a long-drawn-out process of decay within the human organism due to the bioenergetic shrinking of the life system."

Not True is the opinion that this book constitutes a claim of cure, mitigation, treatment, of CANCER.

Not True is the opinion by the FDA that "Blood" or "Tissue" is a "disease", a "disease condition" or a "symptom"; that this book states them as such; that this book constitutes a claim of cure, treatment etc. * * *

Concealed, that this work is a historical document of the discoverer's experiences in the socialist and psychoanalytic movement of 25 years ago, between 1927 and 1937.

(signed) WILLIAM MOISE

The opponent here used the "BIG LIE" technique. This Exhibit (5) evidence was admitted at the trial (R. 336). It could not be brought directly into the trial record because it showed the fraud, and my attempts of proving fraud ("*WHY*" or *Motives* of my attitude to injunction) were ruled out by Judge Sweeney.

At the hearing before the Appellate Court for the First Circuit on November 5, 1956, I brought forth in oral argument the charge of perjury against Joseph Maguire and

Peter Mills in my reply to their reply argument. I had hesitated until then bringing forth this grave charge. When in his reply to my argument he continued to slander me financially, and proved once more that he was completely devoid of any sense of truth or decency, it would have been unwarranted to further adhere to restraint and good breeding, or to further hesitate from medical consideration to tell the truth about a man of such character.

"Joseph L. Maguire and Peter Mills have both committed perjury in addition to previous fraudulent deceit of U. S. Courts on the witness stand at the trial on May 5, 1956. The perjury concerns their knowledge of the content of the documentary compilation 'Conspiracy' (Vol. No. 41) (abstracted in *Record Appendix, Vol. I*, Exhibit No. 4 for the Defense 'The Red Thread of a Conspiracy'). This compilation contains documentary proof of treason against the U. S. A." (Reply Brief, Wilhelm Reich, p. 1).

The Contradictory Testimony of Joseph Maguire and Ilse Ollendorff on Vol. 41 of "Conspiracy"

1. Joseph Maguire denied under oath on the witness stand knowledge of the "Conspiracy" document.

2. Witness Ilse Ollendorff testified that he had been in possession of Vol. No. 41 of "Conspiracy" while interrogating her.

3. Knowing the content of the "Conspiracy," Vol. No. 41, he also knew that he had received it from Secretary of Health, Education and Welfare, Oveta Culp Hobby, to whom it was sent on September 1, 1954, in full reliance on the integrity of the Health Department of the U. S. Government.

4. Joseph Maguire deceived the Health Department when he used this volume for his own information only, and not as information for the U. S. Public on the matters contained therein.

5. Having had knowledge of Vol. No. 41 of "Conspiracy," the social administrator, Joseph Maguire, knew well the following of its contents, among others:

(a) The documents concerning the Red Fascist conspiracy in the U. S. A., including the attack upon the Discovery of the Life Energy. (See *Record Appendix, Vol. I*, "The Red Thread of a Conspiracy.") Maguire kept silent before the Court.

(b) The people who were involved in the conspiracy.

(c) The search for information on WR's laboratory work and its invasion by tools of an espionage ring operating in the U. S. A.

(d) Information regarding the orgone energy motor and William Washington's involvement, 1948-49.

(R. 333-335. All emphasis by WR.)

JOSEPH MAGUIRE, a witness, having been first duly sworn, was examined and testified as follows:

Direct examination by Dr. Reich:

Dr. Reich: Mr. Maguire, you conducted the case against Orgone for how long,—since when did it begin?

Mr. Maguire: Well, in the first place, I have conducted no case.

Dr. Reich: Well, you have presented it?

Mr. Maguire: I have conducted no case against Orgone, at any time.

Dr. Reich: But you were the lawyer?

Mr. Mills: I object, Your Honor, as entirely irrelevant.

The Court: *I will allow it.* I am going to give him a *little more latitude than a lawyer would have.*

Dr. Reich: (*Shows book to the witness*) Can you identify this book, please?

Mr. Maguire: **I have never seen this book before.**

Dr. Reich: You say you have never seen this book before. On July 26, you had the same book in your hands, and you quoted from it. Would you kindly read the title of the book?

Mr. Maguire: "Wilhelm Reich, History of the Discovery of Life Energy—1942-1954."

Dr. Reich: Just read the title of the book, *that's all.*

The Court: *Read the title.*

Mr. Maguire: *Well, there is so much on here, I don't know what is the title.*

Dr. Reich: It is right here.

Mr. Maguire: Reading what Dr. Reich has pointed out to me, which is the title, and which is in rather small print, "*Conspiracy and Emotional Chain Reaction.*"

Dr. Reich: Have you ever had that in your hand?

Mr. Maguire: *I have had what might be a similar volume.*

Dr. Reich: *Similar or identical?*

Mr. Maguire: I can't answer that. The way the book is constructed, it is loose leaf and the pages can be withdrawn very readily.

Dr. Reich: Mr. Maguire, may I repeat my question? Did you see that book? **Did you ever have it in your hands on July 26—yes or no?**

The Court: He said he did not know.

Mr. Maguire: **No.**

The Court: **I can't receive that in evidence.**

Dr. Reich: *Did you ever see this pamphlet?*

Mr. Maguire: I have seen one similar to it.

Dr. Reich: Would you read the title, please?

Mr. Maguire: "Wilhelm Reich, Biographical Material —History of the Discovery of the Life Energy—Documentary Supplement No. 2—*The Red Threat of a Conspiracy.*"

Dr. Reich: Is that known to you?

Mr. Maguire: *Well, I said I have seen something or probably similar to this.*

Dr. Reich: Did you see this pamphlet?

Mr. Maguire: No, I didn't.

Dr. Reich: You never saw this pamphlet?

Mr. Maguire: No, I didn't.

Dr. Reich: The third one—this is the last one. Do you know this one? Here is the title. The same series?

Mr. Maguire: I don't understand what you mean.

Dr. Reich: Did you ever read it or have it in your hands? Are you acquainted with this title? Would you please read it?

Mr. Maguire: Did I have this pamphlet in my hands?

Dr. Reich: Not this one.

Mr. Maguire: I have seen and had one in my hands, I presume.

Dr. Reich: With the same title. Would you read the title?

Mr. Maguire: "Atoms for Peace vs The Hig."

Dr. Reich: Did you read it?

Mr. Maguire: *I think I read that one.*

Dr. Reich: You think you read it?

Mr. Maguire: Yes.

Dr. Reich: I offer this as an Exhibit now.

Mr. Mills: I object. It is irrelevant and immaterial.

The Court: **Are these books covered by the Decree?**

Mr. Mills: **I believe so.**

The Court: **All right I will admit them.**

Mr. Maguire: **May I make a statement? That book is not covered by the Decree.**

His own witness, Ilse Ollendorff, revealed on the witness stand the identity of the Vol. #41 of "Conspiracy" from which he had quoted during her examination, and which had been sent to the Secretary of Health, Education and Welfare:

(R. 355-358)

ILSE OLLENDORFF, a witness, called by and on behalf of the respondents, first being duly sworn, was examined and testified as follows:

Direct examination by Dr. Reich:

Dr. Reich: Miss Ollendorff, I shall not ask any questions as to identification since we know who you are. *Do you know this volume? (Shows document to witness) (Conspiracy*—WR)

Miss Ollendorff: Yes.

Dr. Reich: Will you tell the jury what that is, please?

Miss Ollendorff: This is a volume of photostated copies of original letters and newspaper clippings that I helped to collect during the time I was an employee of the Foundation. It was collected in a *loose leaf* binder like that.

Dr. Reich: When was that material collected? When was it done, exactly?

Miss Ollendorff: I was there at the time. Part of the material was contained in the files and records that I kept, and it was collected *in the present order after the injunction was filed.*

Dr. Reich: Will you please tell the jury why this material was collected?

The Court: *I don't think we are interested in why it was collected.*

Dr. Reich: Will you please **read the title?**

Miss Ollendorff: **Conspiracy and Emotional Chain Reaction."**

Dr. Reich: **Will you tell the jury whether you saw this volume here in the hands of Mr. Maguire Tuesday?** (May 1, 1956—WR)

Miss Ollendorff: **I saw a volume of this material. It was a limited edition, No. 41.**

Dr. Reich: Of this volume?

Miss Ollendorff: **Of this material in Mr. Maguire's office on Tuesday.**

The Court: This is of this year?

Miss Ollendorff: Yes, when I was called again to identify some of the material from the bookkeeping records.

Dr. Reich: Will you please tell the jury how it came about that **I brought that here?**

Miss Ollendorff: You showed me a document, a statement, that I gave as a witness before, and you asked me if I was aware of what this document contained in this volume. I said I was not sure o it. I knew that I wrote that document but I took your word that it was in this volume because it would be one of the documents that would be contained in this volume.

Dr. Reich: You are quite certain? You are under oath. Are you **quite certain that the volume, which you saw in**

Mr. Maguire's hands and the volume I show you, are the same series, the same kind?

Miss Ollendorff: **It is the same material.**

Dr. Reich: **Are you aware that Mr. Maguire had denied that?**

Mr. Maguire: **I certainly object to that. That is absolutely an incorrect statement. May I have the Court Reporter read the testimony back?**

The Court: **The jury will be the people to decide. The jury has heard your testimony, and now they have heard this testimony, and they will decide it.**

Dr. Reich: *May I repeat the question?*

The Court: *You may.*

Dr. Reich: This morning, when Mr. Maguire was on the witness stand, I held up the same volume * * *

The Court: Let me put this question to you. It is your testimony that you saw that in the hands of Mr. Maguire, and whether it was about some statement of yours that was in there. **Do you consider it inconsistent with his testimony this morning?**

Miss Ollendorff: **I consider it inconsistent and I was disturbed about it.**

The Court: All right.

Dr. Reich: I have no more questions.

AFFIDAVIT

October 22, 1956

This certifies, that according to the records of the Orgone Institute Press:

1. Copy No. 41 of "Conspiracy — An Emotional Chain Reaction" was sent to Oveta Culp Hobby, Secretary, Department of Health, Education & Welfare, on September 1, 1954.
2. Copy No. 52 of the same publication was sent to Nelson D. Rockefeller, Jr., Asst. Secretary, Department of Health, Education & Welfare, on September 2, 1954.

Camille Thruston
Camille Thruston
Former Secretary, Orgone Institute Press

Michael Silvert, M.D.
Michael Silvert, M.D.
Former Supervisor, Orgone Institute Press

Notarisation:

Sworn to before me this
22nd day of October, 1956

Philip LaGrivara

PHILIP LAGRIVARA
Notary Public, State of New York
No. 41-7400600
Qualified in New York County
Cert. filed with N.Y. Co. Clk. & Bx. Co. Clk.
Term Expires March 30, 1958

9/30/58

It would be anticlimactic to bring forth more such activities of the counsel for our Health Department. The Court records are full of such examples of pranking somersaults.

The *"Cosmic Event"* of May 12, 1954 and all that preceded and followed this event was excluded from testimony at trial, although it was *"OROP Desert Ea"* which constituted the central object of the conspiracy (Appeal Brief, *WR* vs. *U. S. A.*, 5160, Summary, pp. 4-20).

The counsel for the complainant again committed fraud when he denied that he has found record of suppressed evidence. The trial records are full of suppression of the crucial evidence, *"OROP DESERT Ea"*, i.e., *the planetary emergency in consequence of invasion from outer space.*

(See p. 45 below for statement on Jurisdiction of District Court.)

SPECIAL REASONS FOR ALLOWING THE WRIT

I. The *PLANETARY EMERGENCY* due to invasion of the earth's atmosphere from outer space, requiring Orgonomic Basic Research, is acute and critical.

II. The *injunction* against orgonomy was obtained by unlawful means in a conspiracy to kill the Discoverer of the Cosmic Energy and to usurp his approach to the space problem for the atomic industry. The injunction blocks crucial scientific research and work in an emergency of planetary dimensions.

III. Security and independence of basic natural science from interference by interests other than learning.

IV. The Discoverer of the Cosmic Energy respectfully requests the privilege to be heard in oral argument for further elaboration of the planetary emergency, which is being furthered by the unlawful injunction.

V. Reasons I-IV for allowing the Writ require the ultimate decision on important questions of federal law not yet settled by the Supreme Court.

ARGUMENT I

The Decision of the Court of Appeals

The opinion of the Appellate Court, rendered by Justice Woodbury:

1. has decided an important question of federal law which has not been, but should be settled by this Court;

2. has decided a federal question in a way in conflict with applicable decisions of this Court;

3. has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(Revised Rules of the Supreme Court of the U. S. A. Part V, Jurisdiction on Writ of Certiorari, Section 19, 1 (b).)

Summary of Trial Errors submitted to Circuit Court of Appeals:

1. *No legal precedent.*

2. *Evidence for defense submerged in secrecy,* kept from view of the Jury and the acting Judge.

3. *The fact that the trial court did not permit testimony as to the motives, the "WHY" in this case* is an error by the trial court and constitutes a legal basis for reversing the decision of the trial court.

Ten Principles of Truthful Conduct

The following Ten Principles of Truthful Conduct in Both Basic Research and Jurisprudence were submitted to the Court of Appeals:

1. Battles for Truthful Procedure are lawful battles.

2. Juries must render their verdicts fully informed.

3. There are no authorities on new knowledge, that is, "Knowledge of the Future." The only authority is the rule of learning.

4. Government must not interfere with basic research.

5. Scientific literature must not be ever impounded or burned anywhere on this planet. (It was done in the U. S. A. by the FDA, August 1956.)

6. Non-appearance in Court as self-defense against fraudulent complaints is a lawful means to avoid legal entrapment by master connivers.

7. Bona fide scientists must not be dragged into Court to be harassed to death by competitive commercial or political interests (R. 503).

8. Disclosure of scientific information, especially if secret, must not be forced by Court action or by adminis-

trative invasion of property and records. There are peaceful ways via conference and agreement.

9. New knowledge requires new administrative laws.

10. Judicial errors must be realized and corrected. They must not be perpetuated (Brief on Appeal for Wilhelm Reich, No. 5160, pp. 1-2).

The following principles were presented, among others, in argument:

Common Principles of Basic Natural Science and Jurisprudence

"The following is a self-evident truth in natural science and its derivative, the judicial common law: *Results obtained by unlawful means are themselves unlawful,* invalid in the technical sense of jurisdiction. The legal profession adheres to these basic self-evident principles of all jurisdiction, since it does not wish to forsake the very foundations of the administration of justice. Conscious, systematic deviation from this principle constitutes the 'shyster,' defined in Webster's dictionary and in the Encyclopedia Britannica as the 'pettifogging lawyer.' (Reich in Brief for Michael Silvert, p. 10 and Reply Brief for Reich, 'Principles Involved,' p. 1a *et seq.*)

"*On Procedure and Law*: If procedure is so designed that it kills truth and fact, then procedure, and not factual truth, must yield to revision.

"If law is practiced in such a manner that quite obviously to everyone, the guilty one goes free and the innocent and decent one faces imprisonment, then the law practice must be changed as quickly and as radically as possible.

"These are the ABC's of justice, obvious a priori."

"*On Responsibility of Science and Medicine*: It is the duty of courts of justice to guard over the dignity of the court and against the abuse of privileges of freedom of action and speech. However, scientists and medical men in high position have the terse duty to watch over the independence of scientific inquiry into the laws of nature from any interference whatsoever, especially from ignorance, arrogance, prejudice, political or commercial interests. Science meets with jurisprudence at the very roots of man's existence in fact, reason and functional logic. Let us not, however, neglect those common roots. We have painfully learned what replacement of such principles by arbitrary interference has done to destroy security and human happiness.

"*On Security of Natural Science*: It is crucial to demonstrate the principle of security of basic research. The very security of Natural Science is in question." (Appeal Brief for WR, p. 49)

The only way that was open to the petitioner to blunt and avert the assault in the original complaint was information to acting Judge Clifford in the "Response" (Petitioners' Ex. 5, R. 85-89, 336) and non-appearance in court. This necessity, to avoid disaster, was explained in District Court hearing before Judge Clifford and in Court of Appeals.

The Court of Appeals ruled against these basic principles involved in the test case. The question involved here is specifically *whether scientists and medical men in high position have the terse duty to guard the independence of scientific inquiry into the laws of nature against any interference whatsoever, especially from ignorance, prejudice, political and commercial interests.*

The test as to the legal urgency of such principles is now brought before the Supreme justices of the U. S. A. Human lives are staked on the answer to this question.

ARGUMENT II

Consequences of Decision of Court of Appeals

The decision in Appellate Court established the following LEGAL PRECEDENT, should it not be reversed by the U. S. Supreme Court:

1. *Fraud is lawful procedure in government to enforce unlawful orders.*

2. *Single federal judges have the power to issue unlawful orders obtained by fraudulent presentations and distortions of facts.* Single men, subject to human error as anybody else, functioning judges on the bench, may make up crimes as they please; they may mete out such punishment as ideological whim, political dependence, ignorance in certain matters or irrational prejudice may motivate.

3. *The judge may keep pertinent facts from the jury in disregard of the Constitution of the U. S. A.* The concepts of "due process of law" in criminal cases "have always meant at least two basic things (1) There must be a law enacted by the proper legislature defining the crime, and (2) the right of trial by jury has always meant that no judge had control over the *facts* of the case, which are the *sole province of the jury.*" (Quotation from an unnamed prominent Washington lawyer, U. S. News and World Report, December 28, 1956.)

4. *Basic civic functions are imperiled by permanent injunctions based on fraud. The doors are opened wide for*

any action that any federal district court may choose to take without any regard to any law; such as issuing a general injunction, telling everybody that no one can do anything contrary to the decree.

Article III (Appendix, 10a) is express and clear: United States courts may act only under laws of Congress granting jurisdiction. The jurisdiction of the district courts is completely subject to congressional action and such courts may even be abolished by Congress at any time.

In the case before the Supreme Court, the essential substance of the legal case is without legal precedent; the factual substance is not on the congressional statute books and the court order was thus without basis in congressional legislation: *Planetary Emergency due to Invasion from Outer Space is unknown to present Law.*

5. *Such "dragnet" injunctions would include anyone in the U. S. A.*, and, through the person being under court order, anyone who has any connection with this person. For example, to talk about or work with Cosmic Orgone Energy in connection with problems of outer space; to construct cosmic energy research tools, would be subject to contempt action by any Federal Court anywhere in the U. S. A. and throughout its realm of influential power.

6. Such unconstitutional injunctions would endanger the existence of anyone who acted as a physician in accordance with his medical conscience and duty.

7. *It would threaten to jail any publisher here or abroad* who, in performance of civic duties, would print such enjoined literature of science, as "Character Analysis,"

"Mass Psychology of Fascism," "The Oranur Experiment," "Ether, God and Devil" for general reading, or would touch upon the Oranur Space Problem.

8. *A single judge's personal opinion regarding cosmic or any other pioneer work would be considered "THE LAW" of the land.*

Anyone would be threatened by such unlawful procedures to be seized and jailed, as is the lawless practice in dictatorships. One might well ask, in accordance with the Washington lawyer "Publius" (pseudonym) (see *U. S. News and World Report* of December 28, 1956):

> "The Fifth and Sixth Amendments provide: *'No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury.'*
>
> "1. Where is the statute, constitutionally passed by Congress, which defines the crime of which one stands accused?
>
> "2. Where is the statute, constitutionally passed by Congress, which gives any court jurisdiction over anyone and everyone who he thinks might disagree with his decrees?
>
> "3. Where is the presentment or indictment by a grand jury accusing * * * of violating *what* law?
>
> "4. What are the limits of this power? If a judge, without law, can sentence one man to 30 days in jail, can he also hang him?
>
> "5. If the courts can create such jurisdiction and powers for themselves, what other powers may they assume?"

These questions concern in a clear-cut manner the danger of development of a dictatorship in the U. S. A.

The Supreme Court "has supervisory jurisdiction over the proceedings of the federal courts. If it has any duty to perform in this regard, it is to see that the waters of justice are not polluted." (Chief Justice Warren in *Stephen Mesarosh* v. *U. S. A.*, U. S. 77 S. Ct. 1, No. 20, October Term, 1956.)

If ever the waters of justice have been polluted, it was in this case.

The Discoverer puts to *TEST* before the supreme judicial body of our land the question:

Jurisdiction of the District Court

The court in first instance had no jurisdiction, since fraud perpetrated upon the court vitiates the jurisdiction. It must be considered and decided upon before further steps are taken. This was not the case in District Court when my "*Response*" was submitted. The injunction was issued without inquiry into the charge of Conspiracy contained in the "Response."

What was in this test case more important to a responsible citizenry, its society and judicial system:

a. *Mechanical obedience to an unlawful, unconstitutional order obtained by subversion and fraud,*

OR

b. *Functioning in order to act in a grave emergency on our planet?*

The decisions in the courts below are warrants to federal agents and officials to perpetrate fraud and deceit in the name of the United States of America upon District

Courts for the purpose of achieving unlawfully private commercial or political ends through injunctions in civil cases.

The Court of Appeals has held that officers and agents of the Federal Food and Drug Administration could procure a valid and enforceable injunction against Basic Research in this Realm of Primordial Cosmic Energy, Crucial to Research in the realm of Unidentified Flying Objects in the Atmosphere of Our Planet; this was done in the name of the United States, by the perpetration of a fraud upon a United States District Court.

It held further that the District Court did not err when it prevented those afflicted by the fraud from showing it to a jury which tried them for contempt.

The Court of Appeals has thus decided a question of federal law which has not been, but should be, settled by the Supreme Court.

The manner in which the Court of Appeals decided the question gives judicial approval to fraud and is so far a departure from the accepted and usual course of judicial proceedings, and is a sanction of such a departure by the District Court, as to call for the exercise of the Supreme Court's power of supervision.

THE CHARACTEROLOGICAL ERROR:

Neglect of Irrational Motivation of Crime and Judgment in this Case

Masters in deceitful litigation do not know or respect truth and fact. They believe that being smart is the same as being just.

The true assailant, the mastermind, in the legal action remained well hidden in the background. He used—and abused—emotionally sick individuals: Peeping Toms, persons offended personally by my disclosures about the "Little Man" (book enjoined and banned as "labeling" of "fraudulent" medical devices), phallic-sadistic-homosexuals who expressed their admiration for me and their wish to be treated by me as they would in my medical office: by assault with a knife, by sadistic derision, slander, or—as a schizoid character—by actual attempt to murder me. These examples may suffice to disclose *some of the pathology* in the background; passive-homosexuals, submitting to the phallic character, the mastermind in conniving.

My authority to state such characteristics of the assailants will scarcely be challenged by those who know my "Character Analysis." Only a mechanistic neurologist who remained sitting on the spot where pathology was 60 years ago will challenge my contentions; the assailant has no right to challenge it after having slandered my good name all over the place.

Distinction between government official in official function and in the bio-psychiatric medical office is of crucial importance to do justice in any legal case.

As long as my medical work on human nature had been confined to individual treatment of emotional disturbances in seclusion, I was only exposed to individual attack by those treated.

But, when I gave up individual work and turned of necessity to work on the *prevention* of mental and emotional disease on the social scene around 1930, in other words, when *Social Pathology* and *Social Psychiatry* began to develop, the field of operations changed for the patient, too. Now, not only the individual case, but anyone in public office suffering from emotional disease felt entitled to use his official position or authority against me and my work for personal (*irrational*) reasons.

The legal test problem before the Court is a problem of pathology rather than of Law: The attack upon orgonomy was mainly due to irrational fear of disclosure of deep, otherwise well-hidden motivations. This attack only brought to a peak what had been going on for decades.

Based entirely upon the rationalistic concepts of human nature of the 18th and 19th Centuries, today's jurisdiction is, in the procedural-legal sense, unaware of *irrational motivation.* Motivation of human action was a mystery of transcendental origin in the 18th Century, emerging from the Reformation with a remnant from the Middle Ages.

Motivation was thought of as rooted in mechanical reflexes and impulses of the brain in the 19th Century, newly developing mechanistic materialism. According to this view, the brain acted like a general, giving his orders to the executive nerves and organs below; a truly hierarchic, mechanistic view, in accordance with the period of the Prussian birth of militarism.

In the 20th Century, the discovery of *irrational* and *repressed motivation of human action* replaced or superseded the mechanistic brain-nerves-organ view, still surviving today in mechanistic neurology and chemotherapy. The "mental drugs" of today are the last stragglers of an over-aged mechanistic concept of Life. The brain gives no orders to the organisms, since the living has functioned without brain development for ages, merely by way of autonomic nerves or even mere protoplasm, i.e., by organized Orgone Energy functions. The brain is no more than an advanced central station of better impulse coordiation, that's all.

With the fall of mechanistic thinking in physiology and the advance of bio-energetic thinking, *motivation* of human activity entered the scene. "Character" became the term denoting so-called bio-energetic, "structural" motivation, readable in "emotional *expression.*"

This now 30 year old knowledge is not on the statute books. Life, however, and the science of life have advanced. The developments in the forms of human love life of the last 25 years have certainly demonstrated the deep bio-energetic changes in human behavior. Of this, many judges have taken *practical, personal and professional* notice; but human behavior and its bio-energetic motivation is not in *judicial-procedural awareness,* as it were. The results of this gap are insolvable legal problems, such as "Juvenile Delinquency." Irrationally based, little understood and therefore legally not manageable, procedures as those which characterized the attack upon Orgonomy by emotionally disturbed individuals in commerce and politics, are the results of the characterological gap in legal application of *Irrational Motivation.*

Without careful study and integration of irrational motivation in legal procedure, nothing can be expected for due process in jurisdiction, in keeping with the advances in human development in this century. Injustice, due to lack of characterological knowledge concerning human irrational nature, must inevitably result. Unprotected, not understood and exposed to slander, irrational hatred of life, fear of bodily sensations, etc., Life is at present severely handicapped in maintaining itself. Still it is the only basic issue that counts, on which all the rest, including jurisprudence, depends.

If the irrational motivation of human activity were included in legal thinking, procedures and statutes, such problems would be much more easily accessible and solvable. The racial problem is bound up and locked in the irrational (Hitlerian) apprehension of the genital embrace between negro and white; this is the emotional, irrational motive in the racial conflict. *Nature* tends to merger of races in every respect; what aims at suppression of primal nature tends to keep segregation and racial hatred going.

There can be little doubt that such catastrophic entanglements of social administration as, for example, in the Clinton, Tennessee, racial segregation case, subterraneous pranksters were active to disorganize and prevent orderly, gradual integration of the races in America.

On Laws Needed for the Protection of LIFE IN NEWBORNS and of TRUTH

(From Wilhelm Reich: "**The Murder of Christ,**" 1951, given to Judge Sweeney on May 7th, 1956; Reply Brief for Wilhelm Reich, 16a-17a)

A careful study of the realm of social pathology reveals the fact that there exists no law in the U. S. A. which would directly protect factual truth against underhanded lie and attack motivated by irrational interests. Truth is at present at the mercy of chance. It depends entirely on whether a law officer is personally honest or dishonest, emotionally rational or irrational, subjectively inclined toward or against factual functions. It is most difficult to operate as a pioneer in new fields of human endeavor, if any emotionally sick individual anywhere on the social scene can—unhampered—destroy work or knowledge he dislikes, and if truth is in no position to defend itself against underhanded attack. It is obvious that the future of the U. S. A. and the world at large depends on the rational upbringing of the newborns in each generation which will enable them to make rational decisions as grown-ups. (See Wilhelm Reich: *Children of the Future,* OEB,* October, 1951.) There do not exist any laws as yet to protect newborns against harm inflicted upon them by emotionally sick mothers and other sick individuals. However, there are many old laws rendered obsolete long ago by progress in the understanding of the biology of man, which threaten progressive educators with extinction if they transgress technically these old laws. These facts, together with the operation on the social scene of emotionally sick

* Orgone Energy Bulletin.

individuals, block progress and the search for better ways in medicine and education. Although laws which are serving the welfare of people at large can never accomplish factual changes, life affirmative laws can protect those who strive practically for betterment of the fate of humanity. Therefore, two laws, one to protect **Life in Newborns**, and a second to protect **Truth** against underhanded attacks (beyond the scope of libel laws which are not suited for this purpose), should be studied and formulated by legislatures, institutions of learning and foundations whose work is primarily devoted to securing human welfare and happiness.

To illustrate: Truthful and thorough investigation of natural love life in children and adolescents, one of the most crucial tasks in present day mental hygiene, is held up and rendered helpless by the single fact that any biopathic individual who himself has been emotionally warped in childhood or adolescence through frustration of his needs for love, is in a position to put in a complaint to an Attorney General's Office to the effect that those who investigate the subject of love life in childhood and adolescence, and make certain suggestions as to its solution, are committing a crime, the crime of "seduction of minors." If the attorney happens to agree emotionally with the complainant, the investigation of fact is completely at the mercy of chance. There exists, according to rich experience in actual situations, no provision on the statute books to prosecute the biopathic individual on the basis that his motivation is not truth-seeking, or helping children or adolescents, but only hate of such scientific procedures. The motivation of an accusation should always be taken into consideration, just as the motive for a murder is taken into consideration.

This example must suffice tc illustrate the situation. The Archives of the Orgone Institute contain enough factual evidence to prove that the situation is bad indeed where pioneering efforts are burdened with the rather hopeless struggle with such irrationalism in addition to the factual difficulties entailed in the pioneering job.

(This is the text of a proposal made to the Congress of the U. S. A. in November, 1952 by The Wilhelm Reich Foundation.)

THE LOGICAL ERROR
in the Procedure before the Court

In times of stress and distress such as ours, it is appropriate to look occasionally backward in time while searching forward into the unknown.

The principles of jurisprudence developed from certain common laws of decent, *life-positive* conduct. The same principle which emerged from common laws of decent conduct also gave birth to certain abstractions of human experience. A certain *"natural philosophy"* always precedes and underlies advances in natural science. Critical *religious* thoughts precede religious developments. The Christian religious philosophy grew out of the principles of Judaism through criticism of rigidities in the Jewish common laws which had stifled the movement forward of society as a whole.

By the same token, certain novel trends of pure thinking usually precede and underlie social developments. Buddha's and Confucius' philosophy underlay life in Asiatic countries. Western philosophies in general derive their principles from Locke, Hume, and others in the 18th

Century and from *"materialistic," "mechanistic"* approaches of the philosophers, beginning with Buechner and leading up to Karl Marx in the 19th Century and the Russian Revolution, 1917. (An abused mechanistic materialism led to the recent mass murder in Hungary (1956).) German idealistic philosophy led to Hegel and the absolute Kaiser-State-Idea. This State Idea plunged the world into the first world war.

It is, most regrettably, unknown that Karl Marx was the first to dissolve a communist organization, the "Kommunisten Bund" in Germany in 1847. Already then a rampant Little Man philosophy of power drunkenness, combined with lack of will to learn, had appeared on the scene, foreshadowing, as it were, the mass murders of the Stalinite-Hitler type one hundred years later.

It has become obvious by now, in the second half of the 20th Century, that all these systems, true and forward driving as they were at their time, have failed to guide our generation along in the present chaos. With the masses of the Eurasian and African continent reaching out without technical or emotional preparedness for the fruits of an advanced technology, most systems of thought failed practically. Until then it was always someone *"above"* or *"in favor of"* or *"against"* the masses of living human beings who did the caring for, suppressing, or feeding or providing *"for"* people.

For the first time in the history of mankind, partially due to the great technological advances, *the masses* THEMSELVES *aspire in this 20th Century to rule their own lives.*

Having been deeply immersed in misery over the ages, a "period of written history of some 10 millennia," they want freedom; but they do not know what freedom really is like, how difficult, responsible, exacting at times to hold,

to preserve and to develop. They learned to *die* for freedom or liberties or abstract ideas. Now they die en masse in their own confusions. The *leaders of the confusion* are organized psychopathic individuals in g o v e r n m e n t ("Higs")* who abuse to their own pathological ends the confusion of the past and present in the human multitudes: FASCISM in all its color in political parlance; Organized Emotional Plague in parlance of Bio-Psychiatry.

Now, this over-aged kind of thinking is beginning to go under. The masses are leaderless, without guiding direction, as it were.

WHERE IS THE NEW KIND OF THINKING THAT, EMERGING FROM THE CONFLICTS OF THE PAST, IS BECOMING THE BEACON INTO THE FUTURE?

If we take the present legal conflict as an example of confusion and entanglement instigated by Higs, we may not find the beacon, perhaps, but we may succeed in obtaining some first orientation. Our first steps will be highly theoretical in thinking, but very practical in real life as applied to the test case before the Supreme Court:

The 18th Century thinkers, the founding fathers of the American Law System, devised an abstract system of logical thought which was factless, formal to the extreme, still alive in England, inescapable in its conclusions, according to the following very much simplified form:

PREMISE ONE: TWO X EQUAL ONE Y
PREMISE TWO: ONE Z EQUALS ONE Y

CONCLUSION: TWO X EQUAL ONE Z

This abstract logical thinking underlies most present-day abstract mathematical logic. The conclusions formed

* Hoodlums In Government.

in this lawful manner are "*necessary,*" i.e., *inescapable* conclusions. They are considered fool-proof, *inevitable.* They underlie our present legal thinking in the western world. They ran into much trouble and conflict with the realities of living social life with the advent of the international labor movement which took hold, in Europe at least, of the less rigid, more "practical" materialistic philosophy, deriving from Buechner and developed toward Karl Marx and Friedrich Engels (1848-1914).

According to the above logic, if two X equal one Z, then it follows that one X equals ½ Z; this is logically perfectly true.

Let us, however, test this truth in living reality. Let us replace the *abstract* symbols, X, Y and Z, by *living* things. Let us put it thus:

PREMISE ONE: TWO HORSES ARE EQUAL TO PULLING ONE LOADED CARRIAGE

PREMISE TWO: ONE OX IS EQUAL TO PULLING ONE LOADED CARRIAGE

CONCLUSION: TWO HORSES EQUAL ONE OX (in pulling one loaded carriage)

This conclusion is logically *and* practically perfectly correct. There will be no conflict in that respect between an abstract logician and the practical driver of the specific carriage, i.e., the *functional logician.*

However, living life has certain specific qualities, called in ORGONOMY "*FUNCTIONAL,*" which distinguish life from all other (mechanical) existence and set it apart in natural science, as it were. This can easily be shown by

pursuing the above logical conclusion further as we did with the abstract symbols, X, Y and Z.

ONE X EQUALS ONE-HALF Z

is a correct statement in fact as well as in formal logic.

IF it is true, as it truly is, that two horses are equal to one ox in pulling a loaded carriage, then it must also be true that:

ONE HORSE IS EQUAL TO ONE-HALF OX IN PULLING A LOADED CARRIAGE

This, however, is not so under any circumstances. *One-half ox cannot pull anything whatever; it is dead.*

At this point, the abstract, formal, factless procedure of reaching conclusions established by our 18th Century philosophers breaks down completely, becomes *useless unless it takes into account the practical application of its abstractions and logical procedures in each single concrete living case, each time anew.* What is called "conclusion" in abstract logic is the same as what we called "due process of law" or "legal procedure" in jurisdiction. These procedures are designed, as are the procedures of conclusion in logic, to arrive at the factual truth; to secure "due process"; to avoid error or judicial injustice.

However, it became quite obvious from our demonstration, that the abstract, formalistic, factless, legalistic procedure must lead to illogic, untruth and consequently to gross injustice if it omits the factual, concrete events in real living life. "One-half ox does *NOT EQUAL* one whole horse in pulling a loaded carriage." It is dead as a doornail. The abstract formal deduction has its limi-

tations and becomes false when it omits concrete living facts. Let us now apply this truth to the case, Wilhelm Reich versus the U. S. A., in the formal abstract-legal version, or WILHELM REICH VERSUS THE HIG, in the factual, concrete meaning of the actual case before the court. It is so very obvious: *The FDA is* NOT *"The" U. S. Government.* And may our good fate protect us from such identity.

The logical breakdown here looks like this:

PREMISE ONE: DISOBEYAL OF COURT ORDERS IS A CRIMINAL OFFENSE.

PREMISE TWO: DISOBEYAL OF COURT ORDERS WAS DONE BY WILHELM REICH.

CONCLUSION: WILHELM REICH HAS COMMITTED A CRIMINAL OFFENSE.

Since criminal offenses are subjected to punishment, WR has to be punished; this according to abstract, formal, legal, logical procedure.

Still, everyone involved in these procedures knew well that Wilhelm Reich had committed no crime, that he was no criminal, that jailing him would be an extreme injustice, that the case should be dismissed. The true "criminals" were those who had instigated the assault upon the discovery of the life energy and had conspired to kill it and its discoverer by fraudulent presentation to the Court. And, finally, WR had done a great service to the nation, to civil rights and principles of science by his resistance to *organized* evil.

The law procedure was obviously entangled in confusion. It was stuck in abstract, factless, unconcrete, me-

chanistic, legalistic thinking. All seemed logical and *just* by way of abstract *formal procedure*. All was so inescapably *unjust* in the face of the living, factual *reality*. Wilhelm Reich is just as little a criminal as half an ox can pull a carriage. And whoever is no criminal, whoever is innocent, has done his duty as a citizen in defying unlawful orders, should not be jailed. This is the *functional* conclusion from living life.

Where was the limitation of the truthfulness of abstract logics in the case: WILHELM REICH versus THE HIG?

The limitation lay in the *omission of the FACTUAL background* and true factual nature of the legal case; in the mechanistic, illogical, rigid separation of the *facts* of the civil complaint 1056, from the *motives* of the Discoverer not to appear in court; in the elimination of the factual motivating substance of the legal conflict at the trial by the lower court. The logical error rested fully on the failure to apply the legal abstraction in the *concrete* reality of living facts and indivisible processes; shortly, the legal procedure failed to be *functional-factual* in addition to being procedural.

> "If procedure is so designed that it kills truth and fact, then procedure, and not factual truth, must yield to revision.
>
> "If law is practiced in such a manner that quite obviously to everyone, the guilty one goes free and the innocent and decent one faces imprisonment, then the law practice must be changed as quickly and as radically as possible.
>
> "These are the ABC's of justice, obvious a priori." (Appeal Brief for WR, 5160, p. 49)

Can it be that this FUNCTIONAL LOGIC is the searched-for new kind of thinking that may guide us along

in the present chaos? We shall have to apply functional logic to actual social reality in order to tell. And thus we have reached the very substance of our test case:

Is a political mass murderer not a murderer to be routed from human society forever only because he is *formally, "legally" "posing"* as a "statesman"?

Is a "diplomat," acting as a spy, not a traitor only because he is *formally* a "diplomat"?

Is a man a judge because he wears a black robe? *Or* because he knows right from wrong?

The chain of such factual arguments is endless. Does anyone really expect to guide the world to better conditions of living if touching hot potatoes of truth is further eschewed?

Does not, seen at close range, good breeding, "Bostonian" reluctance to "hurt feelings," or plain "pass-the-buck" philosophy contribute its share to commitments of mass murder? It certainly does.

It is true: *Orders must be obeyed.* But, we must add and never forget: *Orders must themselves be lawful.* Never forget this, lest we go down in history as traitors to mankind. Corrupt thinking has nearly succeeded in destroying our civil liberties; our natural rights; our hopes; the fruits of our toil; the cleanliness of our lives; the right to be bona fide wrong; the mercy toward bona fide error; trust among friends, between parents and children or lovers.

Are orders issued on principles of *untruth*, based on opinions only, not on facts, or *distortion of facts* according to expediency; *falsification of history* in the service of *principled lie;* eradication of integrity as a basic foundation of social law—are these "laws" *LAWFUL laws?* It is on the principle of unprincipled, arbitrary, unlawful orders that all tyranny rests.

MY CONCLUSION IN THE APPEAL BRIEF TO THE APPELLATE COURT

"We must set the principles of truthful conduct against the continued practices of pettifogging deceit in the service of evil and treason.

"We must reiterate the basic principles of decent conduct against deliberate misrepresentation and outright fraud perpetrated on Courts of Justice.

"We must adhere to and never let go of the principle which *declares all judgments and orders null and void which were obtained by fraudulent misrepresentation of facts.* (See Excerpts of Hearing, November 4, 1955, R. 504-527 and Petitioners' Ex. 5, R. 85-104, 336, 'Atoms for Peace vs. the Hig.')

"The case should be dismissed and reopened again to procedures which will guarantee the absence of such deceit."

ORDERS HAVE TO BE LAWFUL ORDERS, BASED ON TRUTH AND NOT LIE, ON FACT AND NOT OPINION.

Orders have to be lawful to be obeyed, lest the judicial doors be widely open to intrusion of social evil.

This principle is now put to the test of jurisdictional decision within the framework of the American Constitution before the Supreme Court of the U. S. A.

RELIEF SOUGHT

The Writ of Certiorari should be granted.

The decision of the Court of Appeals should be reversed.

Adequate judicial steps in legislation should be taken to prevent such dangerous entanglement of decent hard-working citizens by irrational administrative practices and unlawful orders.

Respectfully submitted,

by WILHELM REICH, M.D.
Counsel for Discovery of the Cosmic Life Energy
Pro se

THE WILHELM REICH FOUNDATION

MICHAEL SILVERT, M.D.
Orgonomic Physician
Pro se

Washington
Jan. 10, 1957

APPENDIX

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

Opinion of the Court

December 11, 1956

WOODBURY, *Circuit Judge*. The United States, on February 10, 1954, filed a complaint under §302(a) of the Federal Food, Drug, and Cosmetic Act, 52 Stat. 1043, 21 U. S. C. §332(a), in the United States District Court for the District of Maine asking for an injunction restraining the Wilhelm Reich Foundation, a Maine corporation, and Wilhelm Reich and Ilse Ollendorff, individuals residing in Rangeley, Maine, from violating §301(a) and (k) of the above Act by either introducing, or causing the introduction into interstate commerce, or, while being held for sale after shipment in interstate commerce doing anything resulting in the misbranding of, certain devices known as "orgone energy accumulators,"* which it was alleged were adulterated within the meaning of §501(c) of the Act and misbranded within the meaning of §502(a) thereof. Service of the complaint and summons was duly made on the defendants on the same day that the complaint was filed.

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* In their commonest form these are box-like structures in which the patient sits for treatment. It is asserted by the Government that these devices were being falsely held out to the public at large by the defendants as at least beneficial in the treatment of a great number of human ills ranging from cancer to the common cold.

Appendix

The defendants entered no appearances and filed no answers. Indeed, in a letter to the judge of the court below dated February 25, 1954, the defendant, Dr. Wilhelm Reich, indicated unmistakably that he, at least, had no intention of filing either an appearance or an answer. Dr. Reich wrote to the court in part:

> "My factual position in the case as well as the world of science of today does not permit me to enter the case against the Food and Drug Administration, since such action would, in my mind, imply admission of the authority of this special branch of the government to pass judgment on primordial, pre-atomic cosmic orgone energy."

On the day after this letter was written requests for admissions were propounded by the United States and served on each of the defendants. These requests were ignored, and on March 19, 1954, upon request of the United States, the default of each defendant was entered by the clerk of the court below. On the same day the United States moved for default judgment, its motion was granted, and the court immediately entered a decree of injunction as prayed for in the complaint. By the terms of this injunction the named defendants, and "each and all of their officers, agents, servants, employees, * * * and all persons in active concert or participation with them or any of them" were "perpetually enjoined and restrained" from indulging in the practices set out in detail in the complaint. Furthermore all orgone energy accumulators out on a rental basis or otherwise owned or controlled by the defendants were ordered recalled to the defendants' place of business in Rangeley, Maine, and there either

destroyed or dismantled for salvage under the supervision of employees of the Food and Drug Administration, and in addition all printed labels and order blanks for orgone energy accumulators, and certain listed descriptive literature pertaining thereto, were ordered destroyed.

Certified copies of the decree of injunction were served on the named defendants on March 22, 1954, and at the same time copies were either served or mailed to several other persons in the Rangeley area who were either employees of or contractors for the defendants in the manufacture and distribution of the devices. At the same time copies of the decree were also mailed to a number of duly licensed physicians in the New York, New Jersey, and Philadelphia area, most of whom specialized in psychiatry, who were known to have used orgone energy accumulators in the treatment of their patients. Included in this group was the appellant herein, Dr. Michael Silvert.

On March 30, 1954, the defendant Ilse Ollendorff as clerk of the corporate defendant sent a telegram to the United States Attorney for the District of Maine stating:

> "The Wilhelm Reich Foundation is far advanced in preparing full compliance with injunction of March 19, 1954 Stop An exact account of measures taken and still in progress will be sent to your office for your information."

No further account of measures taken to comply with the injunction was ever sent to the District Attorney, nor does it appear that in fact any such measures ever were undertaken.

Next, on May 5, 1954, the doctors in the New York-Philadelphia area referred to above, including as we have

already noted the appellant Dr. Michael Silvert, applied to the court below for leave to intervene. Their application was denied on November 17, 1954, in accordance with an opinion of the court below of that date reported in 17 F.R.D. 96 (1954). This court affirmed on that opinion *sub nom Baker* v. *United States,* 221 F. 2d 957 (1955).

We turn now to the case before us which was initiated by the United States Attorney for the District of Maine on July 15, 1955, when, acting under §302(b) of the Act, he filed in the court below an information charging the Wilhelm Reich Foundation, Dr. Wilhelm Reich and Dr. Michael Silvert with failing and refusing to obey the injunction of March 19, 1954, and asking for an order to show cause why they should not be adjudged in criminal contempt for their misbehavior. The defendants appeared and filed motions to dismiss, which were denied; the United States moved to amend, its motion was allowed, and the defendants again moved to dismiss and their motions were again denied. They also filed several other motions, all of which were denied, and do not require description or discussion. It will suffice to say that the defendants were given full opportunity for hearing on every occasion.

Eventually, on May 3, 1956, the defendants, in accordance with their request, were put to trial by jury on their pleas of not guilty. They were found guilty by the jury and thereafter sentenced by the court, the corporation to a fine and the individuals to terms of imprisonment. These appeals are from the respective judgments of sentence.

The defendants did not contend below and do not urge here that the injunction of March 19, 1954, had in fact

been obeyed. On the contrary, they admitted at the trial that no attempt had been made to comply with its terms. Their contention is that the court below had no jurisdiction to issue the injunction. The individual appellants say that they, both individually and acting through the corporate defendant, of which Dr. Reich was the moving and guiding spirit, were engaged in basic scientific research which no agency of the Government had jurisdiction to interfere with or control, and that furthermore and more specifically, the court below had no jurisdiction to issue the injunction for the reason that it had been procured by fraud and deception practiced upon the court by officers and agents of the Food and Drug Administration. In addition Dr. Silvert contends that he is not bound by the injunction because he was not a defendant in the original suit in which it was issued and had not been served with process therein.

None of these contentions have any merit.

We turn first to Dr. Silvert's separate contention. It has been settled law for a long time that one who knowingly aids, abets, assists, or acts in active concert with, a person who has been enjoined in violating an injunction subjects himself to civil as well as criminal proceedings for contempt even though he was not named or served with process in the suit in which the injunction was issued or even served with a copy of the injunction. *In Re Lennon*, 166 U. S. 548, 554 (1897); *Alemite Mfg. Corp.* v. *Staff*, 42 F. 2d 832 (C. A. 2, 1930) and cases cited. See also Rule 65(d) F. R. Civ. P. The question then is whether Dr. Silvert had actual knowledge of the injunction of March 19, 1954, issued against the Wilhelm Reich Foundation, and Dr.

Wilhelm Reich and Ilse Ollendorff personally. There can be no doubt that he did. He was mailed a copy of that injunction when it was issued, he admitted at the trial that he read the injunction when he received it, and moreover he was one of those who moved to intervene in the suit in which it was issued. Thus it is abundantly clear that he knew of its existence and knew its terms.

The appellants' first jurisdictional contention does not deserve much comment or discussion. Its refutation is obvious from its mere statement. Of course the United States Government has power to forbid and power to take appropriate steps to prevent the transportation in interstate commerce of devices of alleged therapeutic value if they are adulterated or misbranded.

The appellants' second jurisdictional contention deserves only slightly more extended consideration. There can be no doubt whatever that Congress in §302(a) of the Federal Food, Drug, and Cosmetic Act gave the District Court jurisdiction over the subject matter of the original suit. Nor can there be any doubt that the District Court obtained personal jurisdiction over the defendants in that suit by legal service of process upon them in Maine. This jurisdiction, once obtained, certainly would not be terminated by any fraud practiced upon the court by the successful litigant. On the contrary, the Court's jurisdiction would necessarily have to continue in order to permit the court to entertain an application by the victims of a successful litigant's fraud to vacate the injunction through the remedies and procedures for relief outlined in detail in *Hazel-Atlas Glass Co.* v. *Hartford-Empire Co.*, 322 U. S. 238 (1944).

And the remedies and procedures available to a defrauded litigant certainly do not include refusal to obey an injunction. It is too well settled to require a lengthy citation of cases that an injunction, temporary or permanent, must be obeyed as long as it is in force and effect. *Howat* v. *Kansas*, 258 U. S. 181 (1922); *United States* v. *United Mine Workers of America*, 330 U. S. 258, 289, *et seq.* (1947) and cases cited. Nor is this rule a mere technical quirk of procedure, for as the Supreme Court pointed out in *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 450 (1911):

> "If a party can make himself a judge of the validity of orders which have been issued, and by his own act of disobedience set them aside, then are the courts impotent, and what the Constitution now fittingly calls the 'judicial power of the United States' would be a mere mockery."

See also the remarks made by Mr. Justice Frankfurter at the bottom of page 311 and the top of page 312 of his concurring opinion in the *United Mine Workers* case, *supra*.

It follows that the court below did not err in refusing to permit the defendants at their trial for contempt to show in their defense that officers and agents of the Food and Drug Administration had procured the injunction of March 19, 1954, by fraud perpetrated upon the court.

Although the court's refusal to permit the defendants to show fraud in procuring the injunction is the only error asserted by them to have occurred at their trial, we have nevertheless, because the defendants were not represented by counsel in the court below and only partially on appeal, examined the record with particular care. We find

ample evidence that Dr. Reich and the Wilhelm Reich Foundation deliberately refused to obey the injunction and that Dr. Silvert aided and abetted them in flouting it. Nor do we find any erroneous rulings of law. Indeed, it is evident from the record that throughout the trial the presiding judge solicitously protected the appellants' rights and gave them full opportunity to present every defense available to them under the law.

Judgment will be entered affirming the judgments of the District Court.

Appendix

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

Judgment

December 11, 1956

This cause came on to be heard on the record on appeal from the United States District Court for the District of Maine, and was argued by Wilhelm Reich, pro se, and Michael Silvert, pro se, and by counsel for The Wilhelm Reich Foundation, appellant, and for appellee.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The judgments of the District Court are affirmed.

By the Court:

/s/ ROGER A. STINCHFIELD
Clerk.

[cc. Messrs. Haydon and Maguire, and Messrs. Reich and Silvert.]

(For judgments of District Court, see R. 534-539)

Appendix

EXCERPTS FROM THE CONSTITUTION

Article III, Section 2:

> "1. The judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States, between a State and citizens of another State, between citizens of different States, between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign states, citizens, or subjects.
>
> "2. In all cases affecting ambassadors, other public ministers, and consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction. In all other cases before mentioned the Supreme Court shall have appellate jurisdiction both as to law and fact, with such exceptions and under such regulations as the Congress shall make.
>
> "3. The trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State the trial shall be at such place or places as the Congress may by law have directed."

Article III, Section 3:

> "1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No

person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

"2. The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood or forfeiture except during the life of the person attainted."

BACKGROUND AND SCIENTIFIC DEVELOPMENT OF WILHELM REICH

(From the Orgone Energy Bulletin, Vol. V, Nos. 3-4, 1953, burned on Court order August, 1956.)

Wilhelm Reich's basic scientific discoveries include the following: Orgasm theory and technique of Character-Analysis (1923-34); Respiratory block and muscular armor (1928-34); Sex-economic self-regulation of *primary* natural drives in their distinction from *secondary, perverted* drives (1928-34); The role of irrationalism and human sex-economy in the origin of dictatorship of all political denominations (1930-34); The orgasm reflex (1934); The bio-electrical nature of sexuality and anxiety (1935-36); Orgone energy vesicles, BIONS, (1936-39); Origin of the cancer cell from bionously disintegrated animal tissue, and the organization of protozoa from bionously disintegrated moss and grass (1936-39); T-bacilli in sarcoma (1937); Discovery of the bio-energy (Orgone Energy) in SAPA Bions (1939), in the atmosphere (1940); Invention of the Orgone Energy Accumulator (1940); and the Orgone Energy Field Meter (1944); Experimental Orgone Therapy of the Cancer Biopathy (1940-45); Experimental

investigation of primary biogenesis (Experiment XX, 1945); Method of Orgonomic Functionalism (1945); Emotional Plague of man as a disease of the bio-energetic equilibrium (1947); Orgonometric equations (1949-50); Hypothesis of cosmic superimposition of two orgone energy streams at the basis of hurricanes and galaxy formation (1951); Anti-nuclear radiation effects of Orgone Energy (The Oranur Experiment, First Report, 1947-51).

Wilhelm Reich was born on March 24, 1897, in Imperial Austria, as the son of a well-to-do farmer. His mother language was German. Until 1938, Wilhelm Reich (hereafter, WR) was an Austrian (Viennese citizen). He had no religious education. He adheres to no religious creed and to no political party.

WR's early education (1903-07) was as a private student. He passed his examinations at an Austro-German public school. He attended a German high school between 1907 and 1915, preparing for natural sciences, and graduated in 1915 with "Stimmeneinhelligkeit". His best subjects were German, Latin and Natural Science.

WR's interest in biology and natural science was created early by the life on the farm, close to agriculture, cattle-breeding, etc., in which he took part every summer and during the harvest. Between his 8th and 12th years, he had his own collection and breeding laboratory of butterflies, insects, plants, etc., under the guidance of a private teacher. The natural life functions, including the sexual function, were familiar to him as far back as he can remember. That may well have determined his later strong inclination, as a bio-psychiatrist, toward the biological

foundation of the emotional life of man, and also his biophysical discoveries in the fields of Medicine and Biology, as well as Education.

After the death of his father, in 1914, WR, at the age of 17, directed the farm work quite on his own, without interrupting his studies, until the war disaster put an end to this work and destroyed all property in 1915. He was in the Austrian Army from 1915 to 1918, a lieutenant from 1916 to 1918.

WR entered the Medical School of the University of Vienna in 1918, earning his living and paying his way through school by tutoring fellow students in premedical subjects. War veterans were permitted to complete the 6-year course in 4 years. WR passed the 18 Rigorosa in 18 medical subjects except one easily, and in all the premedical subjects received "excellent" (*"ausgezeichnet"*). He was graduated and obtained the M.D. degree in July, 1922, from the University of Vienna.

During his last year of medical school, WR took postgraduate work in Internal Medicine at the University Clinics of Ortner and Chvostek at University Hospital, Vienna. He continued his postgraduate education in Neuro-Psychiatry for 2 years (1922-24) at the Neurological and Psychiatric University Clinic under Professor Wagner-Jauregg, and worked one year in the disturbed wards under Paul Schilder. His postgraduate study also included attendance at polyclinical work in hypnosis and suggestive therapy at the same University Clinic and special courses and lectures in biology at the University of Vienna. Also, while still in medical school, in October

1920, WR attained membership in the Vienna Psychoanalytic Society, then under Professor Sigmund Freud.

WR began psychoanalytic and psychiatric private practice in 1922. By 1933, the demands of work in orgone energy research required the termination of private practice.

WR was First Clinical Assistant at Freud's Psychoanalytic Polyclinic in Vienna (under the directorship of Dr. Edward Hitschmann) from its foundation in 1922 until 1928; Vice-Director of the Polyclinic, 1928-1930, and Director of the Seminar for Psychoanalytic Therapy at the same institution, 1924-1930. As a member of the faculty of the Psychoanalytic Institute in Vienna, 1924-1930, WR gave lectures on clinical subjects and biopsychiatric theory. He did research in the social causation of the neurosis at the Polyclinic from 1924, and at mental hygiene consultation centers in various districts in Vienna (*Sozialistische Gesellschaft fuer Sexualberatung und Sexualforschung*), centers which he founded and led from 1928 through 1930. He continued his mental hygiene work in Berlin, 1930-33, as lecturer at the Psychoanalytic Clinic and at the Worker's College, and as head physician in mental hygiene centers of various cultural organizations in Berlin and other German cities.

Between 1934-39, WR lectured and did research in *orgone biophysics* at the Psychological Institute of the University of Oslo, Norway.

The Orgone Energy Laboratory was transferred by WR to Forest Hills, New York, WR coming to the U. S. A. on a non-quota Professor visa, in August, 1939. He was Associate Professor of Medical Psychology at the New

School for Social Research, New York, 1939-41, giving lectures on orgone biophysics.

The *Orgone Institute* was founded by WR in 1942 in New York, and in the same year 280 acres of land were acquired in Maine and called "*Orgonon*", the future home of *Orgonomy*, the *Science of the Life Energy*. *The Wilhelm Reich Foundation* was founded in Maine, 1949, by students and friends, to preserve the Archives of WR and to secure the future of WR's discovery of the Cosmic Orgone Energy.

Glossary

A new scientific discipline must employ new terms if old ones are inapplicable. Orgonomy introduced the following terms:

Anorgonia. The condition of diminished or lacking orgonity (q.v.).

Armor. *See* character armor, muscular armor.

Bions. Energy vescicles representing transitional stages between non-living and living substance. They constantly form in nature by a process of disintegration of inorganic and organic matter, which process it has been possible to reproduce experimentally. They are charged with orgone energy (q.v.), i.e., *Life Energy* and may develop into protozoa and bacteria.

Character. An individual's typical structure, his stereotype manner of acting and reacting. The orgonomic con-

cept of character is functional and biological, and not a static, psychological or moralistic concept.

Character-Analysis. Originally a modification of the customary psychoanalytic technique of symptom analysis, by the inclusion of the *character* and *character resistance* into the therapeutic process. However, the discovery of the *muscular armor* necessitated the development of a new technique, namely vegetotherapy. The later discovery of *organismic orgone energy* (*"bioenergy"*) and the concentration of atmospheric orgone energy with an orgone energy accumulator necessitated the further development of character-analytic vegetotherapy into an inclusive, biophysical *orgone* therapy. (*See* physical and psychiatric orgone therapy.)

Character Armor. The sum total of typical character attitudes, which an individual develops as a blocking against his emotional excitations, resulting in rigidity of the body, lack of emotional contact, "deadness". Functionally identical with the muscular armor. (q.v.)

Character, Genital. The un-neurotic character structure, which does not suffer from sexual stasis and, therefore, is capable of natural self-regulation on the basis of orgastic potency.

Character, Neurotic. The character which, due to chronic bioenergetic stasis operates according to the principle of compulsive moral regulation.

COPY BOUND

Appendix

Emotional Plague. The neurotic character in destructive action on the social scene.

Muscular Armor. The sum total of the muscular attitudes (chronic muscular spasms) which an individual develops as a block against the breakthrough of emotions and organ sensations, in particular anxiety, rage, and sexual excitation.

Orgasm. The unitary involuntary *convulsion of the total organism* at the acme of the genital embrace. This reflex, because of its *involuntary* character and the prevailing orgasm anxiety, is blocked in most humans of civilizations which suppress infantile and adolescent genitality.

Orgastic Impotence. The absence of orgastic potency. It is the most important characteristic of the average human of today, and—by damming up biological (orgone) energy in the organism—provides the source of energy for all kinds of biopathic symptoms and social irrationalism.

Orgastic Potency. Essentially, the *capacity for complete surrender to the involuntary convulsion* of the organism and *complete discharge* of the excitation at the acme of the genital embrace. It is always lacking in neurotic individuals. It presupposes the presence or establishment of the genital character, i. e., absence of a pathological character armor and muscular armor. Orgastic potency is usually not distinguished from erective and ejaculative potency, both of which are only prerequisites of orgastic potency.

LOSE IN CENTER

Appendix

Orgone Energy. Primordial Cosmic Energy; universally present and demonstrable visually, thermically, electroscopically and by means of Geiger-Mueller counters. In the living organism: *Bio-energy, Life Energy.* Discovered by Wilhelm Reich between 1936 and 1940.

Oranur denotes orgone energy in a state of excitation induced by nuclear energy. (DOR denotes *D*eadly *OR* energy.)

Orgone Therapy

Physical Orgone Therapy: Application of physical orgone energy concentrated in an orgone energy accumulator to increase the natural bio-energetic resistance of the organism against disease.

Psychiatric Orgone Therapy: Mobilization of the orgone energy in the organism, i.e., the liberation of biophysical emotions from muscular and character armorings with the goal of establishing, if possible, orgastic potency.

Orgonity. The condition of containing orgone energy; the quantity of orgone energy contained.

Orgonometry. Quantitative orgonomic research.

Orgonomic ("Energetic") Functionalism. The functional thought technique which guides clinical and experimental orgone research. The guiding principle is that of the *identity of variations in their* common functioning prin-

ciple (CFP). This thought technique grew in the course of the study of human character formation and led to the discovery of the *functional* organismic and cosmic orgone energy, thereby proving itself to be the correct mirroring of both living and non-living basic natural processes.

Orgonomy. The natural science of the cosmic orgone energy.

Orgonotic. Qualities concerning the orgonity of a system or a condition.

Sex-Economy. The body of knowledge within Orgonomy which deals with the economy of the biological (orgone) energy in the organism, with its *energy household.*

Stasis. The damming-up of Life Energy in the organism, thus the source of energy for biopathy and irrationalism.

Stasis Anxiety. The anxiety caused by the stasis of sexual energy in the center of the organism when its peripheral orgastic discharge is inhibited.

Stasis Neurosis. All somatic disturbances which are the immediate result of the stasis of sexual energy, with stasis anxiety at its core.

Work Democracy. The functioning of the natural and intrinsically rational work relationships between human beings. The concept of work democracy represents the

established *reality* (not the ideology) of these relationships which, though usually distorted because of prevailing armoring and irrational political ideologies, are nevertheless at the basis of all social achievement.

TESTIMONY OF PETER MILLS

(R. 348-354)

(All emphasis by WR)

PETER MILLS, a witness, called by and on behalf of the defendants, first being duly sworn, was examined and testified as follows:

Direct examination by Dr. Reich:

Dr. Reich: Here is the first Exhibit, Mr. Mills. This was taken from the records about your activities in connection with what you did for us. Mr. Mills, what is this?

Mr. Mills: This is a table of events from the records. What is your question, Doctor?

The Court: I presume, Mr. Mills, that all he means is this: To the best of your knowledge, is this a fair representation of your activities.

Dr. Reich: This is an abstract of our association?

Mr. Mills: I don't know.

Dr. Reich: Would you please inspect it?

Mr. Mills: I am presented, Your Honor, with an eight-page list of items and dates and I am in no position to verify or deny.

The Court: Do you have any reason to challenge any of it from your memory?

Mr. Mills: No, I have no reason to challenge it but I haven't any reason to confirm it either, Your Honor, as they are listed. I could state, generally, that I would try to be responsive to any questions that the examiner asks.

The Court: *They have a right to show the transactions. If we have to go through the books and take item by item, and you use the charts and books, I think you should check that this noontime and let us see if it is a fair and accurate representation.* He asked you if that is a fair representation of your activities in relation to the corporation.

Mr. Mills: Well, I am looking at the photograph, and it bears my signature, which I recognize as a statement, as a Notary Public, on August 11, 1947. I believe that was the first contact that I had with Dr. Reich. Dr. Reich called at my office to have a Notary take a statement and I notarized that statement and I affixed my name on it.

Dr. Reich: There are dozens of them?

Mr. Mills: There was one other occasion.

The Court: I am going to ask you to hand that list to Mr. Mills and I am going to ask you during the recess to check, so far as you can, whether that is a fair representation of your activities.

(Recess 12:20-2:05)

MR. MILLS resumes the stand:

Dr. Reich: Mr. Mills, did you look through the material?

Mr. Mills: I did.

Dr. Reich: Is it authentic material in connection with your connection with Orgone Institute and the Wilhelm Reich Foundation?

Mr. Mills: I did not get the first few words?

Dr. Reich: *Is this material legal material which you have handled* in your function as a counsel for the Foundation, for the Orgone Institute, and for many of its employees and directors?

Mr. Mills: *It is not.*

The Court: Let me ask you this: Is that list a fair representation of activities in which you *were engaged in relation to the corporation or some of its subsidiaries?*

Mr. Mills: *It is not, Your Honor.*

Dr. Reich: Mr. Mills, have you been the counsel of the Corporation of the Wilhelm Reich Foundation? Did you incorporate the papers and sign all documents?

Mr. Mills: Part of your question I would say in the affirmative. *I was at one time counsel for the Corporation, and I was the attorney at the time it was incorporated.*

Dr. Reich: Did you act as counsel for the Corporation?

Mr. Mills: Yes.

Dr. Reich: That was in 1949?

Mr. Mills: I think 1950 or 1951.

Dr. Reich: The Wilhelm Reich Foundation was incorporated by you as a lawyer in 1949. Isn't that true?

Mr. Mills: *I was the attorney at the time of the incorporation.*

Dr. Reich: You partook in the meetings of the physicians who *constituted the board of trustees of the Wilhelm Reich Foundation?*

Mr. Mills: *Some of them.*

Dr. Reich: *But you were our counsellor, our attorney?*

Mr. Mills: *On some matters.*

Dr. Reich: Yes, on basic matters, some of our legal matters, from 1949 to 1952?

Mr. Mills: I believe that that is correct.

Dr. Reich: *That is about three years?*

Mr. Mills: *Yes.*

Dr. Reich: The documents which pertain to this service, that *you rendered, are in there?*

Mr. Mills: I couldn't say all of them are in there, but certainly *many of them are.*

Dr. Reich: Would you permit that I submit this material as evidence?

The Court: The question is: Does he agree that this material, which he identifies, substantially or partially, represents his transactions. Will you agree that that be put in evidence?

Mr. Mills: *I would not agree to agree or disagree. I would not from my review of it.*

Dr. Reich: My question was, do these documents pertain to your service as our counsel?

Mr. Mills: There is a great deal more in these documents that I have no knowledge of.

Dr. Reich: Would you agree to eliminate those which do not pertain to your service as counsel?

Mr. Mills: I would agree that many of these are. There are corporation papers here. There are many other things which certainly appear to be authentic.

Dr. Reich: For instance, one or two examples—one document there appears to be a notarization?

Mr. Mills: Yes.

Dr. Reich: Another notarization is a very important, crucial document pertaining to what we called Vacor Phenomenon. Do you remember that?

Mr. Mills: I do.

Dr. Reich: You do?

Mr. Mills: Yes.

Dr. Reich: The fact that I want to establish here is only one. You were for three years—for more than three years—a good friend of ours and a counselor?

Mr. Mills: That's correct. I was professionally, but not intimately.

Dr. Reich: There was some private contact?

Mr. Mills: Yes, a cup of coffee.

The Court: With cream and sugar in it?

Dr. Reich: That's right.

Dr. Reich: Now, Mr. Mills, the problem which is before us here, in this legal case—I think the Court will permit me, as a human being, to ask one central question which pertains to the Injunction since you are the counsel for the opponent.

Mr. Mills: Are you asking me a question or testifying?

Dr. Reich: I am leading up to my question. My question is now why you changed from our counsel to be the counsel for the opponents?

Dr. Reich: This problem, Your Honor, I submit to you to be admitted in Court.

The Court: Well, what is your question?

Dr. Reich: My question is, under the circumstances, what reasons, or what facts induced Mr. Mills after being our counsel for three years, and I regarded him as a good

friend, to be our opponent's counsel, and the one to prosecute me and Dr. Silvert as criminals?

The Court: *That is a fair question if there is anything.*

Mr. Mills: The question is, what prompted me?

Dr. Reich: What made you change your mind?

Mr. Mills: *I have never changed my mind.* I am not conscious *of changing my mind.*

The Court: Wait a minute. The original question was *what prompted you to change sides.*

Mr. Mills: *I never changed sides.* I first made my connections, I believe, with you on *August 29, 1952.* **I never advised you on matters concerning the Pure Food and Drug Administration.** I did not read the law with respect to the Pure Food and Drug Administration. I did not know it had any application in this business. You did not advise me.

Dr. Reich: In 1952 you stopped being our counsel, and then in 1954—I think it is 1953, because we have information that the complaint was here in court for a long time, and you were the attorney for the opponent in 1952. Do you remember that in 1952 to put it correctly and legally, that you were present at a meeting with the Pure Food and Drug Administration * * *?

Mr. Mills: I do not.

The Court: Let him finish the question.

Dr. Reich: *You don't know?*

Mr. Mills: *That's right.*

Dr. Reich: You do not remember the meeting where the physicians were there in my study, in the Observatory?

Mr. Mills: The only recollection I have with reference to the Pure Food and Drug Administration, in your con-

nection, is one afternoon we were on the premises, you and I, and you said to me *"spies—The Pure Food and Drug Administration * * *"*

Dr. Reich: I do not remember that, but do not interrogate me. I will ask you questions. You will have plenty of time to interrogate me later. I am sorry, but that was out of step. Are you convinced that I am trying to get out the truth here?

Mr. Mills: I presume so.

Dr. Reich: Will you agree with me also that it is the job and the task and the obligation of everyone to get out the truth?

Mr. Mills: I certainly do.

Dr. Reich: *You will certainly agree that the function of the District Attorney is not to prosecute by all means and to convict, but to find the truth? I will appreciate it if you will help to find the truth.*

Mr. Mills: *I certainly agree with you. I will try to help you.*

The Court: You are getting argumentative. *You have shown he was your counsel for three years.* You can argue the rest of it when you argue your case, *but I do not think you ought to pursue it any further.*

Appendix

THE FRAUD AND THE CONTEMPT PROCEEDINGS*

(Legal Summary)

The information charging the petitioners with contempt was filed by their former attorney who is now the United States Attorney for the District of Maine (R. 348, *et seq.*, and Appeal Brief for WR, pp. 7r-43r, Appendix to Brief). It was charged that Reich and the Foundation failed to comply with the injunction (R. 470, *et seq.*).

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* The injunction should not have been granted. The order was entirely void. Although it was called to the attention of the Court of Appeals, it overlooked the overwhelming weight of judicial authority to the effect that a person charged with contempt may always show in his defense that an order is void. [*Ex parte Rowland* (1882) 104 US 604, 26 L ed 861; *Ex parte Fisk* (1884) 113 US 713, 28 L ed 1117, 5 S Ct 724; *Re Ayers* (1887) 123 US 443, 31 L ed 216, 8 S Ct 164; *Re Sawyer* (1888) 124 US 200, 31 L ed 402, 8 S Ct 482; *Ex parte Buskirk* (1896, CA 4th) 72 F 14; *Ex parte Robinson* (1906, CA 9th) 144 F 835; *Lewis* v. *Peck* (1907, CA 7th Ill) 154 F 273, cert den 207 US 593, 52 L ed 355, 28 S Ct 258; *Brougham* v. *Oceanic Steam Navigation Co.* (1913, CA 2d NY) 205 F. 857; *Abbott* v. *Eastern Massachusetts Street R. Co.* (1927, CA 1st Mass) 19 F 2d 463; *Beauchamp* v. *United States* (1935, CA 9th Cal) 76 F 2d 663; *Russell* v. *United States* (1936, CA 8th Minn) 86 F 2d 389; *Graham* v. *United States* (1938, CA 9th Cal) 99 F 2d 746; *Western Fruit Growers, Inc.* v. *Gotfried* (1943, CA 9th Cal) 136 F 2d 98; *United States* v. *DeParcq* (1947, CA 7th Ill) 164 F 2d 124; *Pueblo Trading Co.* v. *El Camino Irrig. Dist.* (1948, CA 9th Cal) 169 F 2d 212, cert den 335 US 911, 93 L ed 444, 69 S Ct 482; *United States ex rel. White* v. *Walsh* (1949, CA 7th Ill) 174 F 2d 49; *Evans* v. *Pack* (1878, CC Mich) 2 Flipp 267, F Cas No. 4566; *United States* v. *Debs* (1894, CC ILL) 64 F 724; *Foot* v. *Buchanan* (1902, CC Miss) 113 F 156; *American Lighting Co.* v. *Public Service Corp.* (1904, CC NY) 134 F 129; *United States* v. *Atchison, T. & S. F. R. Co.* (1905, CC Mo) 142 F 176; *Brotherhood of R. & S. S. Clerks* v. *Texas & N. O. R. Co.* (1928, DC Tex) 24 F 2d 426, mod on reh 25 F 2d 876, affd (CA 5th) 33 F 2d 13, which is affd 281 US 548, 74 L ed 1034, 50 S Ct 427]. (Citations from Reply Brief for The Wilhelm Reich Foundation by Counsel Charles Haydon, pp. 4-5.)

Immediately, the Foundation and WR moved to dismiss for lack of jurisdiction (R. 463-464). Then, on October 10, 1955 motions were made and argued on behalf of all of the petitioners to dismiss the information and vacate the decree of injunction for suppression and falsification of evidence (R. 468, 484).

In order further to demonstrate the fraud and suppression which appellants prove permeated the entire case from its inception, on November 4, 1955, Wilhelm Reich argued his motion to show "illegal misrepresentation in Court of pertinent facts" (R. 500). The motion was denied on that day, despite the argument of Reich that he sought to proceed "with enumeration of the misrepresentations of pertinent facts" (R. 513). He was prevented from so doing by the Court. At that time none of the appellants were represented by counsel (R. 504 and Petitioners' Exs. 4 and 5, R. 1-104, 336).

Thereafter on November 17, 1955, the appellant Reich sought to inspect material subpoenaed from the Food & Drug Administration, including reports on actual experiments, but that motion was denied as well (R. 530).

No testimony was permitted to be taken and no hearings were held on any of the motions, which were all denied.

Again, at the trial itself, the Court prevented the development of such evidence of fraud by the petitioners when it ruled at virtually the outset of the trial:

"I am not interested in anything that took place prior to the issuance of the injunction." (R. 121)

The rulings of the Court below deprived the petitioners of the opportunity to show that the entire decree was the result of a fraudulent conspiracy, and that they were thus convicted without due process of law.

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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 688

WILHELM REICH, THE WILHELM REICH FOUNDATION, AND MICHAEL SILVERT, *Petitioners*

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

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BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (Pet. 1a-8a) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered on December 11, 1956 (Pet. 9a). The petition for a writ of certiorari was filed on January 10, 1957. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, in a contempt proceeding for admitted violation of an injunction, petitioners could attack the injunction as obtained by fraud of government agents.

STATUTES INVOLVED

18 U.S.C. 401 provides:

> A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as—
>
> * * *
>
> (3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

Sections 301(a) and (k), and Section 302(a) and (b) of the Federal Food, Drug and Cosmetic Act of 1938, 52 Stat. 1042, 1043, 21 U.S.C. 331(a) and (k), and 332(a) and (b), provide:

> Sec. 301. The following acts and the causing thereof are hereby prohibited:
>
> (a) The introduction or delivery for introduction into interstate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded.
>
> * * *
>
> (k) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to, a food, drug, device, or cosmetic, if such act is done while such article is held for sale after shipment in interstate commerce and results in such article being misbranded.
>
> Sec. 302. (a) The district courts of the United States and the United States courts of the Terri-

tories shall have jurisdiction, for cause shown, and subject to the provisions of section 17 (relating to notice to opposite party) of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914, as amended (U.S.C. 1934 ed., title 28, sec. 381), to restrain violations of section 301, except paragraphs (e), (f), (h), (i), and (j).

(b) In case of violation of an injunction or restraining order issued under this section, which also constitutes a violation of this Act, trial shall be by the court, or, upon demand of the accused, by a jury. Such trial shall be conducted in accordance with the practice and procedure applicable in the case of proceedings subject to the provisions of section 22 of such Act of October 15, 1914, as amended (U.S.C. 1934 ed., title 28, sec. 387).

STATEMENT

The petition for a writ of certiorari seeks review of the affirmance of a judgment of contempt imposed after conviction by a jury under 18 U.S.C. 401 and Section 302(b) of the Federal Food, Drug and Cosmetic Act of 1938 (*supra*) for violating the terms of an injunction issued by the United States District Court for the District of Maine. Wilhelm Reich was sentenced to a term of two years' imprisonment; Michael Silvert was sentenced to a term of one year and one day; and the Wilhelm Reich Foundation was fined $10,000 (R. 367). Their convictions were affirmed on appeal (Pet. 9a).

The injunction decree, which petitioners were found to have violated, was issued on March 19, 1954, under the authority of Section 302(a) of the Federal Food,

Drug and Cosmetic Act (*supra*, pp. 2-3), and was obtained upon default (R. 441). The only response to the complaint filed by the government was contained in a letter from petitioner Reich to the District Court in which Reich stated that his position in the world of science would not permit his appearance in the case since it would imply an admission of the authority of the government to pass judgment on "cosmic orgone energy" (Pet. 2a).

The decree (R. 441-446) enjoined, *inter alia*, Wilhelm Reich, the Wilhelm Reich Foundation, and all persons in active concert or participation with them, from violating the provisions of the Federal Food, Drug, and Cosmetic Act, by shipping in interstate commerce certain devices known as "orgone energy accumulators" with misleading labeling to the effect that their use would be beneficial in the cure, mitigation, treatment, and prevention of a great number of diseases ranging from the common cold to cancer. The decree also contained certain affirmative directives (R. 443-446), to the effect that orgone energy accumulator devices owned or controlled by the defendants, together with the literature constituting their labeling, which had been shipped in interstate commerce, should be recalled to the defendant's place of business and dismantled for salvage or destroyed; that certain identified items of printed matter should be destroyed and others should not again be employed as labeling; and that compliance should be under the supervision of employees of the Food and Drug Administration. Petitioners do not deny that they were served a copy of the court injunction and that they disobeyed its terms.

On October 10, 1955, this criminal contempt action was commenced against petitioners by the filing of an information charging them with disobedience of the terms of the injunction (R. 470-482). At a hearing on November 4, 1955, petitioner Reich moved that the information be dismissed on the ground that the injunction was obtained by the misrepresentation and concealment of facts and illegal procedural maneuvering (R. 512). Petitioner Reich offered to show that the government misrepresented the facts, and thus practiced fraud upon the court, when it charged, in the complaint for the injunction, that his orgone energy accumulator was a fraudulent device (R. 513, 515, 519, 520). The court explained that petitioner Reich was in the wrong forum and should have made such a showing when he had the opportunity to defend against the complaint for an injunction, instead of refusing to appear, thus forcing the court to accept the facts alleged in the complaint as true (R. 514, 515-516, 519, 520).

At a pretrial hearing on the contempt information, the court refused to consider petitioner Reich's motive in defaulting in the action for the injunction (which Reich explained was based on the fact that the court had no jurisdiction over basic natural science and because of a conspiracy against him) (R. 514, 517). It ruled that the jurisdiction of the court in the injunction proceeding had already been affirmatively determined in the injunction proceeding itself, and also by the Court of Appeals in a separate action (R. 516-517).[1]

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[1] After the default decree was entered against the defendants in the action for an injunction, a group of men, including petitioner Silvert, who claimed they used the science of orgonomy in their

At the trial of the case be ore the jury, evidence was introduced to establish th disobedience to the injunction (see, e.g., R. 170, 18 , 193-194, 197-198, 244-245, 248-249, 262, 268-269, 28 285, 320, 343). Petitioner Reich admitted that he lid not obey the injunction (R. 117, 329, 336, 532). Petitioner Silvert, in answer to a query by petition r Reich, conceded that they (he and Reich) were det rmined to resist the injunction, went about armed, a nd were ready to go to jail rather than submit to its terms (R. 343).

ARGUME NT

Petitioners do not deny tha they had notice of the injunction and disobeyed its t rms. They renew here the arguments made before th e courts below that the court issuing the injunction ad no jurisdiction, on the broad ground that the gov rnment has no jurisdiction over basic natural scienc , and on the more specific ground that the injunctio n was obtained through fraud.

1. The issue of jurisdicti n over basic natural science is not involved in th is case as the District Court pointed out to petiti oners at the pre-trial hearing (R. 515). This in junction enjoins petitioners from shipping misbr anded devices through interstate commerce and rest rains them from doing anything to the devices while held for sale after such shipment, which results in thei r becoming misbranded. Petitioners may experiment a s they please and hold such theories as they choose. They may not make

practice of psychiatry, attempted to intervene to have the judgment set aside and to permit them to answer the complaint. Their petition was denied. *United States* v. *Wilhelm Reich Foundation*, 17 F.R.D. 96, affirmed *per curiam*, *sub. nom. Baker et al* v. *United States*, 221 F. 2d 957 (C.A. 1), certiorari denied, 350 U.S. 842.

false assertions of fact with respect to the curative power of articles shipped through the channels of interstate commerce. *Seven Cases* v. *United States,* 239 U.S. 510, 516-517.

2. The accusation of fraud, misrepresentation, and misconduct of the government officials in obtaining the injunction, whatever their validity, have no relevance in a contempt proceeding for violation of the injunction. The issue may be raised by an independent action to have the injunction vacated under the provisions of Rule 60(b) of the Federal Rules of Civil Procedure. As long as an injunction is in force and effect, however, it must be obeyed. See *United States* v. *United Mine Workers of America,* 330 U.S. 258, 293; *Howat* v. *Kansas,* 258 U.S. 181, 189-190. To hold otherwise would make a mockery of the judicial power of the United States. *Gompers* v. *Bucks Stove & Range Co.,* 221 U.S. 418, 450.

CONCLUSION

For the foregoing reasons, we respectfully submit that this petition for a writ of certiorari should be denied.

J. LEE RANKIN,
Solicitor General.

WARREN OLNEY III,
Assistant Attorney General.

BEATRICE ROSENBERG,
ISABELLE R. CAPPELLO,
Attorneys.

FEBRUARY, 1957.

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